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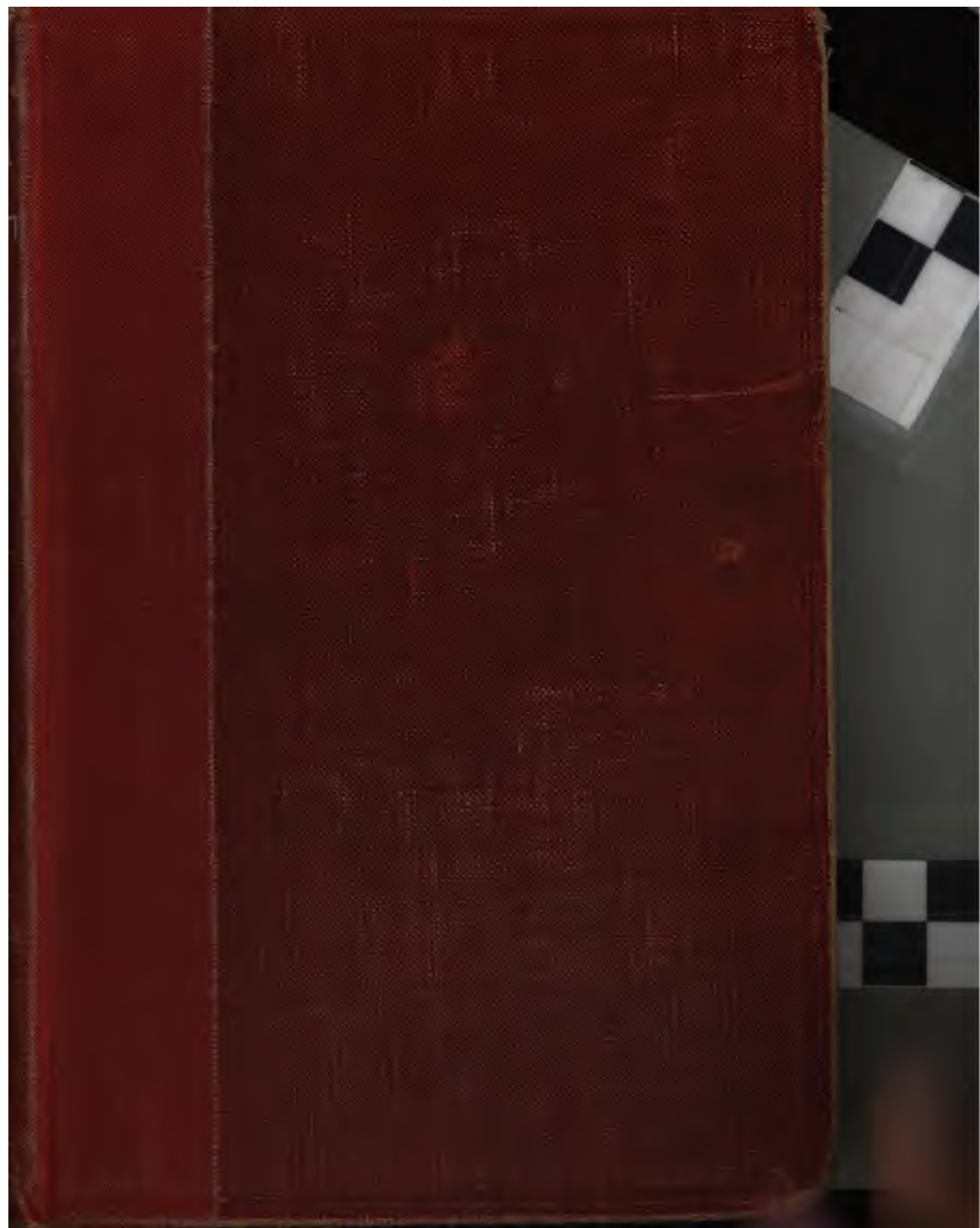
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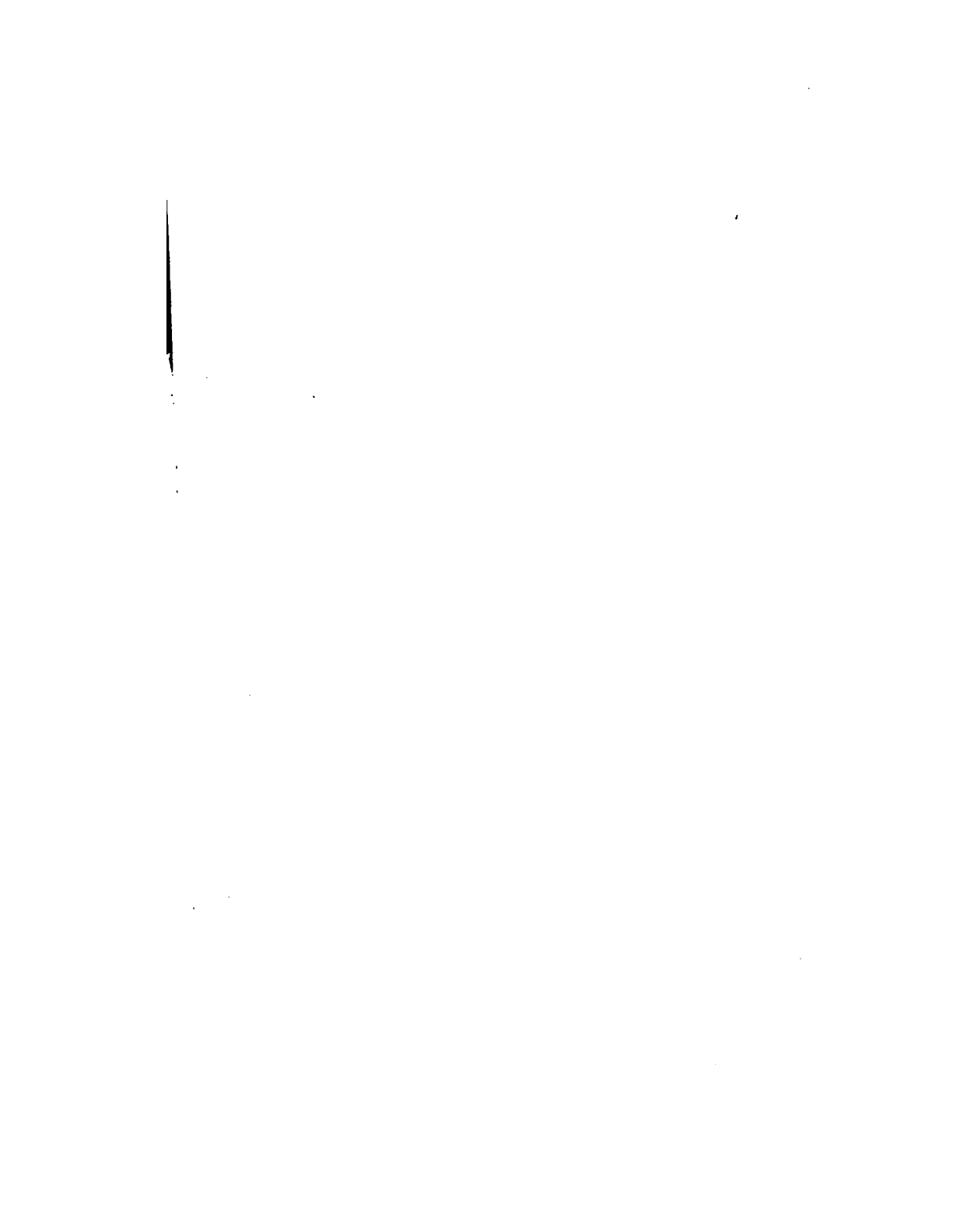


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SIR THOMAS SMITH
DE REPUBLICA ANGLORUM

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DE REPUBLICA ANGLORUM

A DISCOURSE ON THE
COMMONWEALTH OF
ENGLAND

BY

SIR THOMAS SMITH

EDITED BY

L. ALSTON, *Christ's College*

WITH A PREFACE BY

F. W. MAITLAND, LL.D.

DOWNING PROFESSOR OF THE LAWS OF ENGLAND

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PREFACE.

SIR THOMAS SMITH'S discourse on the Commonwealth of England is a famous and in some sort a well-known book. No one would think of writing about the England of Elizabeth's day without paying heed to what was written about that matter by her learned and accomplished Secretary of State. His little treatise comprises some sentences touching the powers of Parliament which have been quoted and transcribed times without number, and which will be quoted and transcribed so long as men take any interest in the history of the English constitution. But if in this sense it has been a well-known book, we cannot say that it has been exactly and accurately known. It has been possible, even for learned men, to mistake a Latin translation for the original text, and the copies of the English text which have been in the market differ materially from each other. Those of the oldest editions have commanded a somewhat high price, while those of later editions give us a good deal of matter which we cannot with any confidence ascribe to the pen of Sir Thomas.

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It seemed then that the time had come when a new edition would be welcome. Also it seemed fit and proper that the new edition should proceed from the Press of that University of which Sir Thomas Smith was in his day one of the most illustrious sons. Mr Alston has kindly taken off my hands a piece of work that I was unable to bring to an end, and, though this is not the place in which I may praise him, I may even here be allowed to say that he has spared no pains in his endeavour to set before the public a good text of a good book.

His Introduction leaves me nothing to do save to call to remembrance the main facts of our author's life. It will not be forgotten that Sir Thomas found a biographer in John Strype, nor that in more recent times Professor A. F. Pollard has written an excellent article about him in the *Dictionary of National Biography*. Mr Mullinger also in his *History of the University of Cambridge* has spoken at some length of Smith's academic career. This being so, but very little need here be said.

Thomas Smith was born at Saffron Walden in 1513. In 1526 he entered Queens' College, Cambridge. At the beginning of 1530 he was elected a fellow of that college, being then B.A. He graduated M.A. in 1533 and shortly afterwards began to lecture on Greek. In 1538 he became public orator of the University. It was at this time that he won the honourable place that he holds in the history of scholar-

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ship by endeavouring in concert with his friend John Cheke to introduce the 'Erasmian' method of pronouncing the Greek language; but he was also paying attention to Roman law. In 1540 King Henry founded the five regius professorships, and the chair of civil law was given to Smith. He went abroad to study and became a doctor in law of the University of Padua; also he saw something of the French universities, in which Roman jurisprudence was beginning to shake off its medieval garb. As in the case of scholarship, so in the case of law, he was on the side of the reformers, and he returned to speak with enthusiasm to a Cambridge audience of the work that was being done by Andrea Alciato and Ulrich Zasius. In religion also he was with the reformers. He became chancellor to Goodrich, bishop of Ely. In 1546 he was ordained priest, and he held the rectory of Leverington in Cambridgeshire. Shortly after the accession of Edward VI. he entered public life and the service of the Protector Somerset. He became clerk of the privy council, steward of the stannary court, a master of the court of requests, provost of Eton, dean of Carlisle, and in 1548 one of the two secretaries of state. The fall of the Protector, to whom he had been faithful, brought some trouble upon him. He was deprived of the secretaryship and the professorship. Mary's accession brought further trouble. A married priest, he had to resign Eton and Carlisle, but from any worse fate than a life in retirement he seems to have

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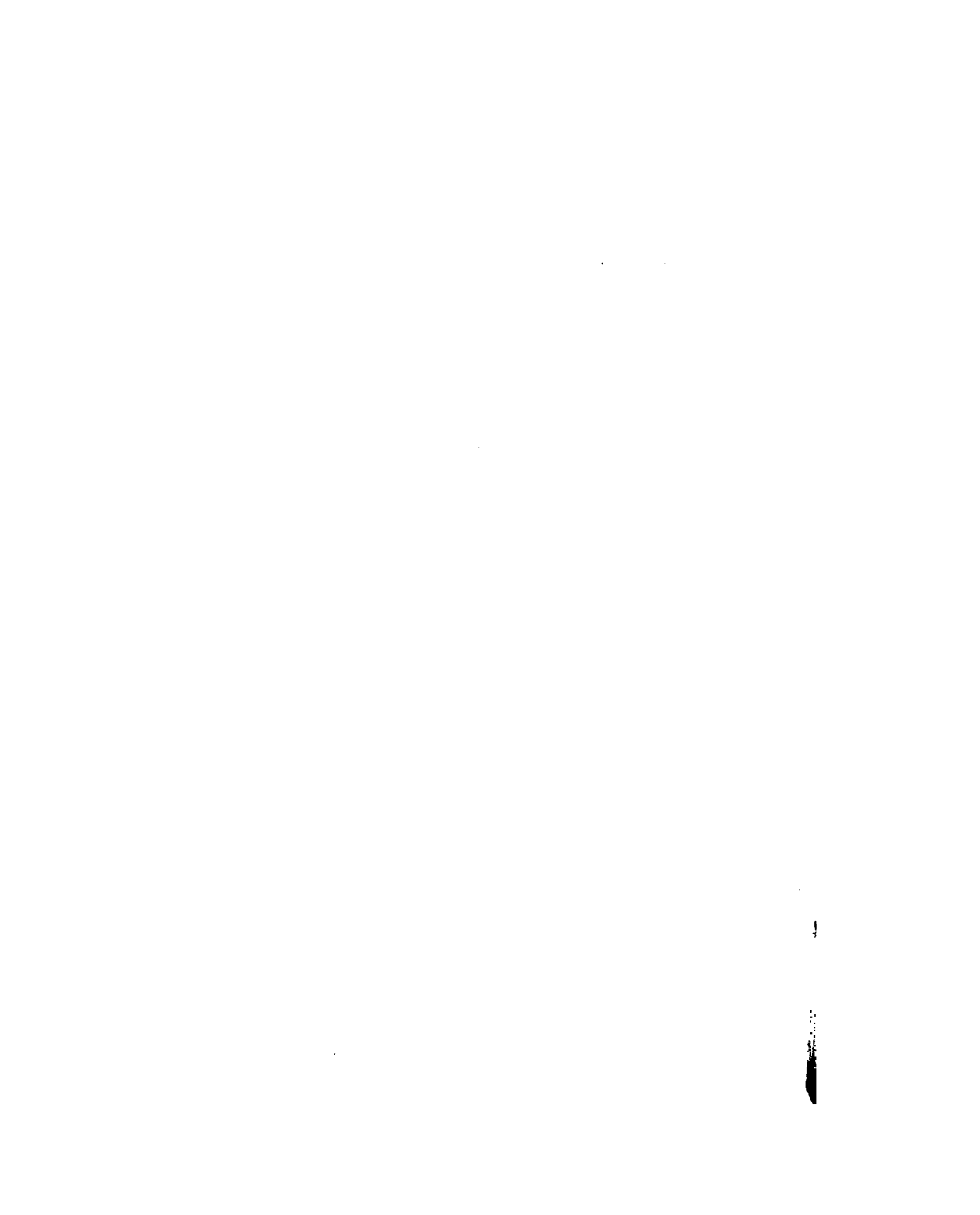
been shielded by Stephen Gardiner, who, it is said, had reason to be grateful to him for similar services performed in King Edward's reign. When Mary died, he once more emerged. He was at once placed upon a commission 'for the consideration of things necessary for a parliament'—the momentous parliament of 1559, in which, notwithstanding his holy orders, he represented the borough of Liverpool. A committee of divines was to meet at his house to review the book of common prayer; but whether that committee ever met seems still to be an open question, and to a degree that is somewhat surprising Smith appears during the rest of his life to have behaved as though he had never been ordained. In 1562 he was sent as Elizabeth's ambassador to France and there he remained until 1566 during a stormy time. While in France he wrote the little treatise that is here printed. He was admitted to the privy council in 1571 and once more became a secretary of state in 1572. He represented the county of Essex in the parliament of that year and became chancellor of the order of the garter. His health failed in 1576 and he died on the 12th of August 1577.

Altogether it is a remarkable career. Few Englishmen have held so many offices of such different sorts. Among his contemporaries his reputation for learning stood high. Not only was he regarded as an erudite 'Grecian,' but he knew something of Hebrew and the modern tongues. Not only was he regarded as an

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eminent and enlightened 'civilian,' but he was accounted a master of history and mathematics and 'natural philosophy.' The chief works of his that have come down to us, beside the book on the Commonwealth of England, are a tract on the pronunciation of Greek and a tract on the reform of English spelling, both of which were published in his lifetime, and an interesting dialogue, printed by Strype, on the question whether it were well that Queen Elizabeth should marry a foreigner, an Englishman, or nobody. We have also many letters on affairs of state which proceed from him. His 'Commonwealth' or 'De Republica' was not published until 1583, some eighteen years after it was first written and some six years after his death. The rapidity with which new editions of it were issued shews that it was widely read, and we may say that it has won for itself a place among our constitutional classics. But at this point I may resign the pen to Mr Alston.

F. W. MAITLAND.



INTRODUCTION.

SIR THOMAS SMITH was Elizabeth's ambassador in France from 1562 to 1566, and it was in this period that he penned what was intended to be the first rough draft of his *De Republica Anglorum*. Perhaps we cannot do better than begin with a quotation from a letter written by Smith to his friend Walter Haddon. It is dated the 6th of April at Bordeaux, whither the English minister had followed the French court from Toulouse, but it was written on the journey. Queen Catherine, we may observe in passing, was on her way to that famous interview at Bayonne of which our historians tell us less than we should like to know. Haddon has asked how Smith employs his time; Smith, in a Latin epistle, which is printed in Haddon's *Lucubrationes*, replies to his queries. The part of the letter which refers to our book may be rendered as follows. "And because in my absence I feel a yearning for our commonwealth, I have put together three books here at Toulouse describing it, taking as the title *De Republica Anglorum*; and in these I have set forth almost the whole of its form, especially those points in which it differs from the others. But it differs in almost all; with the consequence that the work has grown larger than I expected. I have written it moreover in the language of our own country, in a style midway between the historical and the philosophical, giving it the shape in which I imagined that Aristotle wrote of the many Greek commonwealths

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books which are no longer extant. I have furnished fruitful argument for those who would debate after the fashion of philosophers on single topics and raise nice points as to justice and injustice, and whether what is held yonder in England as law be the better, or what is held here and in those regions which are administered in accordance with the Roman Law. For all things, almost, are different, and I have set them forth on both sides in rough general outline. 'Why not send the books to me?' (you say). 'I desire eagerly to see what you have done.' They still lie among the rough scrawls of my note books; when they have been fully written out and given to the world in book-form, I shall send them to you. For you were accustomed to think (as the well-known writer puts it¹) that our trifles had some value. You will certainly say, if I mistake not, when you read them through, that I am not ill-versed in our country's institutions. But it needs must be that in this brief essay there should be gaps, and a few points not filled in, because I brought with me not a single book and had no men of law to consult. Accordingly I have written only as much as was supplied by my memory, for the time being, of matters I had seen or read. Those parts that are imperfect I shall be able to complete at my leisure when I have returned home."

The work itself is dated with scrupulous exactitude, much in the fashion of Thucydides, in the last chapter of the third book. The author tells us that he has set forth the government of England as it stands "at this day the xxviiij of March *Anno* 1565 in the vij yeare of the raigne and administration thereof by the most vertuous and noble *Queene Elizabeth*, daughter to King

¹ Namque tu solebas nostras (ut ille ait) esse aliquid putare nugas. Cf. Catull. 1. 3.

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Henrie the eight, and in the one and fifteteenth yeere of mine age, when I was ambassador for her majestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope *Cbarles Maximilian* did holde, having then raigned iij yeares." We shall see grounds for believing that Smith kept to his purpose of making additions to his treatise later on, and we might therefore be tempted to conclude that this epilogue—the British Museum MS. cuts it off as a separate chapter headed *Epilogus*—with its past tenses, "was ambassador," "did holde," "having then raigned," is one of these later additions. But the similarity of the last sentences of the chapter to the sentences of the letter to Haddon makes it more probable that the two were written close about the same time; and that Smith is sympathetically putting himself in the place of the readers to whom this date will belong to the past. In describing the English constitution, he tells us, he has set before our eyes "the principall pointes wherein it doth differ from the policie or government at this time used in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the civill lawe of the Romanes compiled by Justinian into his pandects and code." He has dealt especially with the "pointes wherein the one differeth from the other, to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace. This will be no illiberall occupation for him that is a Philosopher and hath a delight in disputing, nor unprofitable for him who hath to do and hath good will to serve the Prince and the common wealth in giving counsell for the better administration thereof." This explanation is very similar to that which he makes to Haddon in his letter dated less than a fortnight later.

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Sir Thomas Smith died on the 12th August, 1577, after an illness that had lasted over a year. The *De Republica* was not published till 1583, when it was brought out by Gregorie Seton (London) with a number of marginal notes, mostly of the nature of corrections, and not always couched in language complimentary to the author of the book. For these notes Smith is apparently not responsible. But the question naturally arises, had Smith in any way polished, or added to, his draft of March 1565?

Now in 1577, the year of Smith's death, though presumably before the month of his death, appeared the first edition of Holinshed's *Chronicle*, and in this was incorporated William Harrison's well-known *Description of England*. Of this again a second and enlarged edition appeared in 1587, four years after the publication of the *De Republica*, and in Harrison's section of the work in this second edition we find an additional chapter dealing with Parliament—a chapter which is a condensation and adaptation of certain chapters of Smith's book. Parliamentary procedure is here described, as Harrison freely admits, in the same words "as sir Thomas Smith dooth deliver and set them downe, whose onelie direction I use, and almost word for word in this chapter, requiting him with a like borowage as he hath used toward me in his discourse of the sundrie degrees of estates in the commonwealth of England, which (as I hope) shall be no discredit to his travell." Here is a confession, but also an accusation. And we turn with some interest therefore to the earlier edition of Holinshed to see what Harrison has had to say about the "sundrie degrees of estates," and whether there is any truth in this remarkably courteous and friendly charge of plagiarism.

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The similarity of the two sets of chapters dealing with the nobility, gentry, yeomanry etc. is sufficiently striking. One of the two authors has "borrowed"; and if the "borowage" was from a printed work, Smith was evidently the debtor in the transaction. Can it however have been Harrison who saw and used Smith's *manuscript*? Possibly, but not probably. When we compare the earlier Holinshed (1577), the later Holinshed (1587), and Smith, we find many differences of a kind that point to Smith's treatment being intermediate in time between the other two. For though he has lifted without acknowledgment the substance of whole paragraphs from his friend's work, he has done so with discretion as regards rearrangement of the matter and also occasional literary improvements. And then when Harrison comes to rewrite his book for the later edition he re-borrows not a few of these improvements—taking over, for instance, the phrase about gentlemen being made "good cheap" in England—and he uses Smith's work as freely as Smith has used his. Moreover, he never hesitates in making his acknowledgments. Smith's name appears more than once in the enlarged chapters, and it is this fact, doubtless, that has caused commentators to overlook Harrison's priority. Had Harrison stolen secretly in his first edition from an unpublished manuscript, he could scarcely have penned that genial sentence about the guilty Smith, nor should we expect to find him so scrupulous in acknowledging his later indebtedness.

If Smith plagiarised from the published Holinshed, and not from some unpublished MS., it must necessarily have been in the last few months of his life, in the course of his prolonged illness. With regard to this last illness, Strype (who, though by no means the most trustworthy

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of biographers, is not likely to have wilfully misstated what he has read) writes as follows (*Life of Smith*, 2nd edit. 1820, p. 148). "But he could not be idle, which he said was contrary to his nature: he was therefore minded to follow his study, and take a review of what he had formerly done. And in this *loathful leisure*, as he called it, among other occupations and pastimes, he would remember the days of his youth, and look back again to his doings then; and now being old, *quasi repuerascere*, i.e. hereby, 'as it were to grow a child again.' When he was secretary in King Edward's days, he wrote a book of the value of Roman coins to our English standard, upon a question Cecil, his fellow Secretary, had moved to him, *viz.* what was the ordinary wages of a soldier at Rome. This book, as many others which he wrote in his youth, he had now lost....He desired therefore the Lord Treasurer to see for it, who he thought had not laid it up so negligently....This book, as it seems, the Lord Treasurer found out among his papers, and sent it to the Secretary, according to his request; which he had desired to see, as he said to the said Lord, *tanquam filium postliminio redeuntem, perditum quasi, et iterum inventum.*" Strype in this passage is quoting from some letter or letters of Smith, and though there is no mention here of the *De Republica*, we gather that Smith was revising at least some of his early writings. Among these he may well have taken in hand the book with which we are here concerned.

There is also a little internal evidence pointing to composite construction and revision of the *De Republica*. This however might conceivably be put down to the account of the editorial hand that prepared the work for publication after Smith's death. But if so, the editor cannot be the commentator who has added the

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marginal notes, for the corrective marginalia occur in what we may call the Harrison chapters as well as elsewhere. Moreover the editor must have been a man of considerable literary ability and have taken unusual trouble in the rearrangement. For the revision which I suppose to have been undertaken at some date between 1565 and 1583 seems to have extended beyond the additional chapters (16 to 24 of Book I.) which were taken over from Harrison. Notice, for instance, in Book II. chapter 2 the words, "Yeomen I call here as before...", and yet there is no other reference to yeomen except in the Harrison chapters¹.

But more important for the settlement of the question of Smith's plagiarism is a linguistic detail. Smith habitually uses "Prince" to stand for "King or Queen," possibly because he is writing in the reign of a queen regnant, but has spent the first forty years of his life in the service of Henry VIII. and Edward, and is equally familiar with the name "King." (Books published in the latter years of Victoria's reign frequently speak of the Queen and her powers and prerogatives as if England had always been and always would be under the sway of a woman.) But in Book I. chapter 18 we are told that the "King's eldest sonne is called *κατ' ἐξοχήν* the Prince," and this use of the title appears

¹ Just possibly however, it may be pointed out in passing, these chapters took the place of some earlier chapters which have been completely omitted. For the third chapter of Book II. opens with the sentence—"The Prince whom I nowe call (as I have often before) the Monarch of Englande, King or Queene,.....";—and yet the word "monarch" has only occurred *once* previously, namely in Book I. chapter 24; the word "monarchy" only twice, in chapters 7 and 9; and the Greek word *μοναρχία* but once also. And further, if we merely strike out chapters 16 to 24 as not belonging to the original text, and do not assume any earlier chapters to have stood in their place, the three books of the treatise would be of very unequal length, viz. 18 (instead of 33) pages, 53, and 32.

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elsewhere in only two places,—in another sentence of the same chapter, and once in chapter 16. In all other cases, even within the Harrison chapters, the other usage prevails.

We may notice also some reasons why Smith, while borrowing freely certain paragraphs of Harrison, may have thought well to leave other passages untouched. Harrison deals at some length with the merchants of England, whose great numbers he pathetically laments as the cause of high prices. Smith, who had written several pamphlets on monetary questions and had perhaps some claim to be called an economist, may well have disagreed with this sweeping statement. Harrison mentions the chief officers of state, giving their order of precedence, and Smith, himself twice secretary of state, may have omitted mention of them on grounds of personal modesty. On similar grounds we may account for his omission of Harrison's description of the clergy. Smith was in holy orders, and may well have shrunk from transcribing the eulogiums on the learning—Greek, Latin and Hebrew—of the English clergy.

Harrison has dealt also with other questions of which Smith treats elsewhere, such as the subdivisions of the county and the duties of sheriffs, justices, and constables, but all this matter Smith leaves severely alone. For an explanation of this, however, we need not go further than the words of Harrison himself, who closes his treatment of the shires in the following characteristic manner. "And this much have I thought good to set downe generallie of the said counties and their maner of governance, although not in so perfect order as the cause requireth, bicause that of all the rest there is nothing wherewith I am lesse acquainted than with our temporall regiment, which (to

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saie truth) smallie concerneth my calling." It was hardly from an author of this stamp that Smith would take matter of legal or quasi-legal character.

One curious point with regard to the assumed plagiarism deserves a passing mention. At the end of Harrison's account of the knights of the garter come the words—"and the rest by certeine statutes and lawes amongst themselves be taken as brethren and fellowes in that order, to the number of six and twentie, as I find in a certeine treatise written of the same, an example whereof I have here inserted word for word, as it was delivered unto me, beginning after this maner." It is not quite clear whether this refers to some formula of admission to the order, which was intended to follow immediately, but for some reason was omitted, or whether Harrison is acknowledging another plagiarism affecting his whole description of the order. In either case it is a little strange that Smith, who was himself chancellor of the order and therefore presumably knew more about it than Harrison (or Harrison's predecessor, if there was one), should in this also (see Book I. ch. 18) have made use of Harrison. But though it is a strange fact, and not to be lightly ignored, it is hardly sufficient in itself to upset the amount of positive evidence in favour of our theory¹.

Let us now look into the subject-matter of the various chapters more in detail.

Book I. begins with a discussion of the familiar sixfold division of commonwealths which we inherit from Aristotle, and of the question, what constitutes justice and law? (chapters 1—6). Incidentally we get a rough statement of what is meant by "the ruling and Sove-

¹ Some additional evidences of divergence in view between the borrowed chapters and the rest of the book are noted later on.

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raigne part" of a commonwealth. (The abstract term "sovereignty" does not appear.) "To rule," (we are told) "is understoode to have the highest and supreme authoritie of commaundement. That part or member of the common wealth is saide to rule which doth controule, correct, and direct all other members of the common wealth" (I. 1). This ruling part may be one man, the few, or the many; but in any case "common wealthes or governements are not most commonly simple but mixt" (I. 6); and so democratic, aristocratic, and monarchical states differ from one another rather like men of "cholericke, sanguine, phlegmatique, and melancolique" temperaments, of which we seldom find "the one utterly perfect without mixtion of the other." How then is our author going to treat England? Is it to be called predominantly democratic, aristocratic, or monarchical?

Smith seems to have hesitated. Chapters 7 and 8 deal with kingship in general, and chapter 9 with "the name king and thadministration of England." This comparatively lengthy treatment of monarchical government, without any corresponding attention to the other forms, points to its being the most important for the purpose of the treatise as a whole—or in other words to England being classed as a monarchy. In chapter 9 he writes as follows. "By olde and auncient histories that I have red, I do not understand that our nation hath used any other generall authoritie in this realme neither *Aristocraticall* nor *Democraticall*, but onely the royall and kingly majestie which at the first was divided into many and sundrie kinges, ech absolutely reigning in his countrie, not under the subjection of other, till...at the last the realme of England grew into one Monarchie." The word "absolutely" is probably not intended to

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carry any greater value than the succeeding phrase "not under the subjection of other"; but England is distinctly called, not an aristocracy, nor a democracy, but a monarchy.

Yet, later on, in one of the Harrison chapters, we get a statement from which the most natural deduction (in accordance with Smith's own statement of what constitutes the sovereign part of a state) would seem to be that England is a democracy. Chapter 24 deals with "the fourth sort of men which doe not rule." "These have no voice nor authoritie in our common wealth, and no account is made of them but onelie to be ruled, not to rule other, and yet they be not altogether neglected....Wherefore generally to speake of the common wealth, or policie of Englande, it is governed, administred, and manured by three sortes of persons, the Prince, Monarch, and head governer, which is called the King, or if the crowne fall to a woman, the Queene absolute....The gentlemen, which be divided into two parts,....The thirde and last sorte of persons is named the yeomanrie; each of these hath his part and administration in judgements, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appeare hereafter" (I. 24). Moreover, when he comes to use the word "monarch" in definite relation to the King or Queen of England (Bk. II. c. 3) he finds it necessary to draw attention to the fact that he is doing so, as if this were in some degree a debatable point.

Smith, then, would seem to have wavered in his treatment. He has not thought the question of sovereignty out to its logical issues, and the matter which he has taken from Harrison has not been so well

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assimilated to the rest of the essay as to allow of the removal of all inconsistencies.

To revert to the earlier chapters. The tenth we notice is a digression. It rules out of account what Seeley would call the "inorganic" state; for as regards such a government as that of the Sultan of Turkey "a man may doubt whether his administration be to be accompted a common wealth or a kingdome, or rather to be reputed onely as one that hath under him an infinite number of slaves or bondmen among whom there is no right, law nor common wealth."

In the eleventh, twelfth and thirteenth chapters we get an adumbration of the probable development of political institutions, beginning with the monarchical household and closing with the great democratic state. There is a natural progress, Smith thinks, from patriarchal kingship in the small community, through an intermediate aristocratic constitution, to the democratic government which is adapted to the community which has outgrown less mature forms of administration. But none of these, he goes on to point out in chapter 15, is necessarily suited to all stages in national character. Democratic institutions best fit one people, monarchical institutions another. And "when to ech partie or espece and kinde of the people that is applied which best agreeth like a garment to the bodie or shoe to the foote, then the bodie politique is in quiet, and findeth ease, pleasure and profit."

Down to this point everything that Smith has written has been of the most general introductory character, with the exception of the single chapter on the English king. Now comes a completely new beginning. "To make all thinges yet cleare before, as we shal go, there ariseth another division of the partes of

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the common wealth. For it is not enough to say that it consisteth of a multitude of houses and families which make stretes and villages, and the multitude of the stretes and villages make townes, and the multitude of townes the realme, and that freemen be considered only in this behalf....This (as I sayde) is not enough. But the division of these which be participant of the common wealth is one way of them that beare office, the other of them that beare none: the first are called magistrates, the second private men" (I. 16). This introduces the interesting Harrison chapters, from I. 16 to the end of Book I. As these presumably do not belong to the original plan of the work we pass direct to the second book.

Book II. begins with the famous passage dealing with Parliament and the authority thereof (II. 1); an account of the forms observed by Parliament (II. 2); and a summary statement of the powers of the Crown (II. 3). Then follows an attempt to classify the forms of political activity with which a treatise on the constitution should deal. "Common wealthes and governmentes" (we are told) "be most occupied, and be most diverse in the fashion of five thinges: in making of battell and peace, or truce with forraine nations: in providing of mony for the maintenance of themselves within themselves, and defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and fiftly in the administration of justice. The firste and thirde we have shewed is doone by the prince in parliament. The seconde and fourth by the prince himselfe. The fift remaineth to be declared" (II. 4). The remainder of the treatise, from this chapter to the end of Book III. (71 pages out of 119, or, omitting the Harrison chapters, 71 pages

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out of 104), Smith devotes to his main topic, which is, not the "constitution" as ordinarily understood by students of political science, but rather that which is usually treated under the heading of Justice and Police.

The *De Republica* is intended as a pioneer treatise in Comparative Politics, and ends with a call to the study of the new subject. But the limits and boundaries of the study are not yet clearly defined; and we need not be surprised therefore that Smith should waver in his views as to what should and what should not be included within it. One fact, however, stands out clearly. The "constitution" does not for Smith consist of the same elements as for Walter Bagehot or his imitators, and his work therefore is not felt by him as the forerunner of such treatises as theirs. For Smith the framework of a commonwealth consists almost entirely of its courts, its judicial system, and its methods of police.

Had his subject-matter been the same as that of Bagehot's *English Constitution*, the form and balance of the essay would necessarily have been very different. No writer dealing with the "constitution" of Elizabethan England, in the ordinary sense of that word, could have ignored the powers and duties of the great officers of state—least of all a writer who had himself, in two reigns, held the high position of Principal Secretary of State. "The period of the Tudors and the early Stewarts was," as Dr Prothero says (*Statutes and Constitutional Documents*, Introd. p. ci.), "the 'period of government by Council.'" Yet the Privy Council receives only the briefest of passing mentions (in II. 3, —where it is treated as an appendage of the Prince). But the Star Chamber, which is practically the same

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body in its judicial aspect, is described at considerable length (III. 4). The relations of church and state were too prominent a question in Smith's time, and convocation was still a body of too great constitutional importance, for them to be ignored (however cautiously they might need to be handled) in an Elizabethan treatise on the constitution. Yet they are passed over without a mention; while the ecclesiastical courts are given the greater part of a chapter (III. 9) and their relation to the Crown is treated with simple directness.

To Smith, then, the constitution of a commonwealth consists primarily of its courts and its various forms of law—martial, ecclesiastical, and general. Nor is his book, though the treatment is intended to be comparative, greatly concerned with the contrast between "constitutional" England and "absolute" France, as we should expect if he were mainly interested in such questions as that of royal and parliamentary sovereignty. The regularly recurring contrast is that between England on the one hand and, on the other, those countries which "doe followe the civill Law of the Romanes compiled by Justinian into his pandects and code" (III. 9). This is the comparison which is foreshadowed in the letter to Haddon ("problemata facere ... utrum sit melius, id quod isthic teneatur in Anglia pro lege, an quod hic, et in illis provinciis, quae Romano iure reguntur") and appears in almost every chapter of the third book.

Why then does he devote those three lengthy chapters to the Prince and the Parliament? He does so because no account of the judicial system would be complete without them. The Prince is the head of that system; he "giveth all the chiefe and highest offices or magistracies of the realme, be it of judgement

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or dignitie, temporall or spirituall"; "all writtes, executions and commaundementes be done in the princes name"; and in time of war and during insurrections he has a certain absolute power called "marciall law"; while the Parliament (King, Lords and Commons) is itself the "highest and most authentically court of Englande"—not of course because of any jurisdiction that the upper house may exercise as a court of error (a jurisdiction which was hardly patent in Elizabeth's day)—nor yet because of impeachments, for impeachments belong, not to Elizabethan times, but to the past and to the future.

That word "court" comes to our modern ears as a mere archaism when it is applied to Parliament. But to Smith the application seems a natural usage, expressive of a still living fact. He does not cut apart the legislative, judicial, and executive functions, and endeavour to assign each to a particular element in the constitution. Rather he tends to blur together the first two, and while of course clearly understanding the great practical difference between statutes and the sentences of lower courts, to treat them as being, for theoretical purposes, members of the same group. Both are the offspring of "courts"; and though Parliament is the greatest among these, and has many functions which the others have not, it is not therefore an element in the constitution which is *sui generis*.

Though we are all familiar with the presence of a court, nominally identical with the House of Lords, as the supreme court of appeal, we have come, with the development of political theory, to feel that the quasi-judicial functions of the full Parliament of King, Lords and Commons ("legitimizing bastards, giving forms of

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succession to the crown, giving most free pardons and absolutions, restoring in blood and name as the highest court," etc.) are incongruous excrescences, historical outgrowths that can best be excused by referring to our non-logical British methods. When the modern historian reminds us, for instance, that a bill of attainder is legislative in form but judicial in fact, we feel at once, as we read such a statement, that Parliament in passing bills of attainder would be encroaching on an alien sphere of activity. But to Smith Parliament is primarily a court, and if dealing with such bills is not its normal or most distinctive function, it is at least a function of prime importance for his particular purpose. "This is the order and forme," he says, summing up the chapter, "of the highest and most authentickall court of Englande, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted vailable to make any new forfeiture of life, member, or landes of any English man, where there was no lawe ordayned for it before."

But has not Smith begun by declaring that "the most high and absolute power of the realme of Englande consisteth in the Parliament?" And does not this statement place Parliament on a totally different level from all other constitutional bodies, and in fact imply the existence of parliamentary "sovereignty"?

Such is indeed the traditional interpretation. And writers on constitutional history have found herein Smith's chief claim to a place in the history of thought. To illustrate the current view it will be sufficient to quote from that well-known *History of the Science of Politics* which we owe to the pen of Sir Frederick Pollock. "In the *De Republica Anglorum* or *English Commonwealth* of Sir Thomas Smith, first published

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after the author's death in 1583, we find something much more like a forerunner of Hobbes. Indeed, so clear and precise are Smith's chapters on Sovereignty that one is tempted to think he must somehow have had knowledge of Bodin's work. At the outset he defines political supremacy in a manner by no means unlike Bodin's. When he comes to English institutions in particular, he states the omnipotence of Parliament in the most formal manner, and so far as I know for the first time, as if on purpose to contradict Bodin's argument that the monarchy of England is really absolute" (p. 54). And in discussing Locke, a little further on, the same author says that "he is nowhere so precise on the supreme authority of Parliament...as Sir Thomas Smith a century before him" (p. 74).

Yet in spite of the consensus of authority on the point there is room for considerable doubt as to whether this view of Smith's position is the correct view. Whatever may be logically deducible from the facts stated in the first four chapters of Book II., it is questionable whether Smith had at all firmly gripped the ideas underlying the modern doctrine of sovereignty. Let us look a little more closely at the wording of these chapters. But notice first the frequent references to the contrasted requirements of war and peace, e.g. in the last chapter of the treatise—"to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace." Now in Book II. chapter 1,—the critical chapter on Parliament,—Smith goes on, immediately after the downright statement so often quoted, to add the following sentence, which, rightly read, is a distinct qualification of that which precedes. "For as in warre where the king himselfe in person,

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the nobilitie, the rest of the gentilitie, and the yeomanrie are, is the force and power of Englande : so in peace and consultation where the Prince is to give life, and the last and highest commaundement, the Baronie...the knightes...the bishoppes...bee present to advertise, consult, and shew what is good and necessarie for the common wealthe.... That is the Princes and whole realmes deede." The whole *power* of the realm is therefore present either when the king is at the head of his army or when the king is present in parliament. A parliament, like the army or the Twelve Men, comes together for special purposes and disappears again. Either parliament or army (the king in both cases being included) may be described as the "power" of England; and the decisions of all three—the prince in the army, the parliament, and the Twelve Men—are alike "absolute"—that is, not subject to appeal.

Let us look at Smith's use of that word "absolute" a little closely. It is a word that comes very frequently from his pen. Aristotle, he says, treats of the division of commonwealths "most absolutely and methodically" (I. 8). In Book I. chapter 6 we get a division "simple, pure and absolute." In I. 16 "an absolute Queen or an absolute Dutches" appears for our "Queen regnant" or "Duchess in her own right." In England the royal and kingly majesty was at the first "divided into many and sundrie kinges, ech absolutely reigning in his countries, not under the subjection of other" (I. 9). "The Prince...hath absolutelie in his power the authoritie of warre and peace" (II. 3), and his lieutenant may have "his royall and absolute power for that time" (I. 18). "In warre time, and in the field the Prince hath also absolute power, so that his worde is a law.... This absolute power is called marciall lawe.... The prince

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useth also absolute power in crying and decreeing the mony of the realme by his proclamation onely" (II. 3).

X But the important chapters for our purpose are II. 5 and II. 8. "By order and usage of Englande there is three wayes and maners, whereby absolute and definite judgement is given, by parliament which is the highest and most absolute, by battle, and by the great assise" (II. 5). "The two first judgementes be absolute supreme and without appeale, and so is also the judgement by the great assise" (II. 8). "Absolute" therefore would appear to be about equivalent to "without appeal," though it is worth noting that one thing may be more absolute than another. Though judgment by parliament, by battle, and by the great assize are all "absolute," judgment by parliament is of the three "the highest and most absolute." Similarly, in matters of foreign diplomacy, we are told that "the kingdome of Englande is farre more absolute than either the dukedome of Venice is, or the kingdome of the Lacedemonians was" (II. 3).

One is inclined to think that it must have been a sort of fashionable catchword, very much in the air at the time. In Lambard, for instance, a contemporary writer dealing with very similar subject-matter, the following statement occurs: "The power of the Justice of Peace is in some cases *Limited*, and (in other some cases) *Absolute*: By which latter word, I do not meane absolute *simply* but after a *manner*: For, they may neither hang a man for a greevous *Trespas* nor fine him for a *Felonie*, and therefore this absolute authoritie is to our Law better knowne by the name of *Discreation*" (*Justices of Peace*, Bk. I. ch. xi., pub. 1581). The last clause of this reads almost as if Lambard were protesting against a particular contemporary usage.

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Smith, then, in declaring Parliament to be the most high and absolute power of the realm (in time of peace) is by no means bringing up for consideration the question of sovereignty in the modern sense, or making statements which have any direct bearing on the great controversy of the next century. Probably he has not seriously thought of the King as being likely to come into opposition with the Houses in time of peace, any more than as likely to come into opposition with the rest of the army in time of war. The King is most powerful *when* he is at the head of his army or *when* he is presiding over his parliament. The contrast upon which Smith's attention is focussed is not the contrast between the powers of the Prince and of the Parliament, but between the powers of Parliament and of those other courts which he describes in later chapters, and describes without any feeling of essential difference between them and this the highest court. He is still, in this respect, under the influence of traditional theory¹. We, split-

¹ If we turn, for instance, to Coke's Fourth Part of the Institutes of the Laws of England—"concerning the jurisdiction of courts"—we find in the preface the following. "*Curia* hath two severall significations, and accordingly it is severally derived. It signifieth the king's court, where his royall person, and his honourable household doe reside.....It also signifieth a tribunall, or court of justice, as here it doth, and then it is derived *à cura, quia est locus, ubi publicas curas gerebant.....*" "Now when I considered how much it would tend to the honour of the king's majesty, and of his laws, to the advancement of justice, the quiet of the subject, and generally to the good of the whole common wealth (no king in the Christian world having such tribunals, and seats of justice, as his majesty hath, which, God willing, in this treatise we shall make to appear) that all the high, honourable, venerable and necessary tribunals, and courts of justice within his majesties realms and dominions, as well civill as ecclesiasticall, might be drawn together, as it were, in one map, or table (which hitherto was never yet done) that the admirable benefit, beauty, and delectable variety thereof might be, as it were, *uno intuitu* beholden, and that the manifold jurisdictions of the same might be distinctly understood and observed.....Out of the duty that I owe his most excellent Majesty, and my zeal, and affection to the whole common wealth, I have adventured to break the ice herein, and to publish more at large those

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ting across our institutions with the sharp hatchet of a theory, which declares one body to be properly legislative, and another properly judicial, find afterwards (with some feeling of awkwardness in our theorising, and some expressions of regret, perhaps, at the imperfection of the constitution) that we have still to deal with legislature-made judicial sentences (such as bills of pains and penalties) and with judge-made law. Smith, not having so broken up his subject-matter, is not under any obligation to spend pains on re-uniting the broken pieces. And similarly he has no temptation to treat of artificial distinctions between what is small and local, on the one hand, and what is large and general, on the other. His book has therefore, in these respects, a unity which a modern treatise, dealing with a more evolved legislature and executive, and a more fully differentiated system of central and local administration, would be likely to lack.

J

But though on certain points we must note that our author's ways of thinking are somewhat medieval, it is no less a matter of justice to point out how unexpectedly modern he can be¹. Political theory was

things which in our reading we had observed concerning jurisdiction of courts.....And thus for all our pains, wishing the benevolent reader all the profit, we (*favente Deo, et auspice Christo*) begin with the high and most honourable court of Parliament." Then follows the first and longest chapter of the book. In one section of it we are reminded "that the lords in their house have power of judicature, and the commons in their house have power of judicature, and both houses together have power of judicature"; another section tells us, of the power and jurisdiction of the parliament, that "it is so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds"; yet throughout, the parliament is treated as a court among other courts, and we find such sectional headings as "*Acts of Parliament enrolled in other courts.*"

¹ In the latter part of this introduction I am very largely indebted to certain written notes of Professor Maitland's, of which I have been permitted to make free use. Some of the succeeding paragraphs are almost direct transcripts from those notes.

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very long in emancipating itself from the influence of theology. Quotation and inference from Scripture are among the strongest arguments which the medieval political theorist can bring to bear in support of his views. But in Smith there is no suggestion of this. There is nothing of the law of God or the law of Nature; no word of the divine right of kings; and if there is a phrase which points in the direction of the contractual theory of government that phrase is not to be pressed. If scriptural instances are mentioned, it is as illustrative matter only, and in order to keep before us the comparative nature of our study. A fanciful sketch is given of the growth of the state, but it is given in an undogmatic way, and the author does not use it to prove that one form of government is always and everywhere the best. Constitutions may be likened to shoes, and each nation must get what fits it best. Moreover, we rarely, if ever, find a really pure specimen of any of the six forms. What we see is some mixture, and we name the specimen after the element that prevails in it. Such terms as "monarchical" must be applied to polities as we apply to men such terms as "choleric," "sanguine," "melancholy." If we call a man "phlegmatic" we do not mean that he has no blood and no bile. There is a curiously modern strain in all this: a certain naturalism or positivism we might call it, which distinguishes Sir Thomas from the dealers in divine right and social contracts: a certain contentment in relativity and a distrust of the absolute. In some important respects he is more modern than } Hobbes or Locke. Civilian though he is, he is remarkably } unjuristic in his method.

To come to more detailed matter, we find, in his treatment of Parliament, that Smith is leaving behind

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the notion of an assembly of estates. In the Parliament the bishops are there "for the clergy"; but there are only two houses, and Smith, himself in orders, sat in the nether house. Of the convocations and their grants of taxes, as has been already pointed out, he has said nothing; and in his Erastian way he held that the ecclesiastical tribunals had become the Queen's courts (III. 9). Altogether, as practical factors we have already rather two houses than three estates. Then inherited theory demands that somehow or other every Englishman shall be "intended"—that is, understood—to be present in parliament, by himself or his representative. How the theory can be fitted to the facts Smith does not explain; but we observe that he does not have recourse to a representation of communities. The communities of the land—the counties and towns as organized bodies—hardly appear on the surface of his book. Here again he is advancing. But there is a certain lack of clearness in his view. For the Harrison chapters have given us an unrepresented, because voteless, class; whereas in Bk. II. c. 1, we find that every one is represented. "For everie Englishman is intended to bee there present, either in person or by procuration and attornies, of what preheminance, state, dignitie, or qualitie soever he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie mans consent."

There is a similar contentment with a bare statement of more or less disjointed facts when he comes to place before us the various powers of Prince and Parliament. Their respective functions are given in catalogue form, rather than combined under general heads. The settlement of weights and measures, for instance, belongs

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to Parliament, but the Prince himself controls the coinage. Smith gives us few negative propositions: he speaks of what can be done, not of what cannot. Usage, it seems, has at certain points defined a boundary. At certain points—but what of others? We get no general theory—as for instance that the action of the Prince should be confined within a sphere that may be labelled as “executive”—and so are not enabled to solve such questions in advance. Still we may perhaps legitimately infer (from I. 7 and II. 1) that the power of the English King does not extend to the laying on of “impositions.” And though Smith has written that “the prince is the life, the head, and the authoritie of all thinges that be doone in the realme of England” (II. 3), we feel that had he foreseen the coming political storm his sympathies would have been less with the Stuarts than with their opponents. He ungrudgingly makes much of the “honor and reverence” that is done to an English queen; as in his patriotic way he tends to praise everything in the English institutions that can be praised, and to find excuses valiantly for all that is open to criticism. But when he wishes to compare the powers of Elizabeth with those of foreign rulers it is to the doge of Venice and the Lacedaemonian kings (II. 3) rather than to the French monarch or the Italian princes (I. 7) that he turns for a parallel. Also it is a little strange to find a faithful servant of Elizabeth suggesting that in the case of “an absolute queen” (or queen regnant, as we should say) the shortcomings inseparable from her sex, “not accustomed (otherwise) to intermeddle with publicke affaires,” would be made up for by the “counsell of such grave and discrete men as be able to supplie all other defectes” (I. 16). Probably he did not expect his august

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mistress to trouble herself with the reading of his little essay.

Of any power of suspending laws, or of issuing ordinances, except in the matter of the currency, we read nothing. Nor do we find any claim that ecclesiastical affairs stand outside the cognizance of Parliament. Moreover it is not suggested that the Prince interferes in parliamentary elections or in the choice of the Speaker—the statement to that effect belongs only to the later amplified editions—or that he controls by command or “influence” the proceedings of either house. Sir Thomas has seen members sent to the Tower for speaking “unreverently or seditiously against the Prince or the privie counsell” (II. 2): but this was done by the house itself.

Yet Smith, though by no means a partizan in his statements as to the relative powers of Prince and Parliament—indeed he hardly seems aware of the possibility of conflict—is very far indeed from being unbiassed when he appears as a patriotic apologist for English ways and English institutions in general. There is of course no objectionable swaggering. He would fain let the facts, if possible, speak for themselves. But the general effect thus produced is one that was bound to be pleasing to English readers. A learned man, learned with all the new learning, well “seen in the tongues,” examines our case. He is not one of our common lawyers; he is a civilian and has viewed the great world. Yet hear, for example, what he has to say of our system of “pleading to issue,” which we might have expected him to regard as a barbarian labyrinth. “Having,” he says, “seene both in France and other places manie devises, edictes and ordinances howe to abridge proces and to finde howe

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that long suites in law might be made shorter: I have not perceived nor read as yet so wise, so just, and so well devised a meane found out as this by any man among us in Europe.”

Unfortunately Smith's patriotic bias is not confined to the mere expression of eulogiums such as this. There are two other passages which deserve more serious notice. Smith himself had before the end of his life allowed himself on one occasion to be over-ruled in the matter of ordering the application of torture¹. Yet he speaks as though torture were absolutely unknown in England and abhorred by Englishmen. And, further, in saying that bondmen had become so few “that it is not almost worth the speaking,” he is saying, as a Russian scholar² has lately shewn us, what was likely to deceive English historians.

We have apologies also, for such the apologist must have felt them to be, for some of our English archaisms, for profitable and vendible wardships and marriages, for a law of marital property exceedingly unfavourable to the wife, for the power of the ordinary over the succession to an intestate's goods, for the injustice of benefit of clergy, and even for trial by battle. We are

¹ See Ellis's *Original Letters*, vol. II. p. 261. “I suppose we have gotten so much as at this time is like to be had; yet tomorrow do we intend to bring a couple of them to the Rack, not in any hope to get any thing worthy that pain or fear, but because it is so earnestly commanded to us. As for Barker, I thynk he hath and will confess so much as his wit will serve him; and yet, as it appeareth, hath been the most doer betwixt the Duke and other foreign practisers. Banister is somewhat obstinate, but little he knoweth. We send you his, Barker's, Higford's and Charles's examinations more than you have had already. I pray you trust that tomorrow we will do what we can do.” (Letter from Smith to Burghley, 17th Sept. 1571.)

² M. Savine, in the *Transactions of the Royal Historical Society for 1903*, “Bondmen under the Tudors.”

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such a military folk, we English—this is the current and flattering excuse. In 1565 we English had lately lost Calais, failed to storm Leith, evacuated Havre, shivered in our shoes lest Spain and France should partition Great Britain; and “pugnacious” would seem a better word than “military.”

But though we may note this tendency, this very natural tendency (especially in a home-sick ambassador ever eager for his recall), to make the best of everything English, we have no warrant for accusing Smith of being so far lacking in good faith as to be secretly pamphleteering in any particular cause. A political pamphlet would hardly have been kept back so long unpublished. Certainly he is not pamphleteering in the interest of monarchy; and if for a moment it occurs to us that the Queen's secretary is concerned incidentally to represent her rule as less despotic than it really is, and to emphasize the fact that the bad days, when military law could be applied in time of peace or juries fined for verdicts unsatisfactory to the Crown, are clean gone by, we shall at once observe that on the other hand he is writing sentences which, if accepted, may be awkward impediments in the way of any further growth of the prerogative. That he is secretly pamphleteering against the Queen's conduct of affairs and intends his readers to perceive a contrast between theory and fact would be a wild supposition. No, almost certainly, this is how Smith sees, or would fain persuade himself that he sees, the English constitution of 1565. And, in spite of patriotic bias, his book suggests the scientific observer to a greater extent than the works of either of his French contemporaries Bodin or Hotman, who, in spite of the philosophical or quasi-historical forms into which they have cast their

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treatises, are to no slight degree advocates of living political causes.

It has been suggested that while in France Sir Thomas may have met and been influenced by the famous Jean Bodin. The meeting between them is not impossible. It is to be remembered, however, that Smith was by some seventeen years the older man, that Bodin's *Methodus ad facilem Historiarum Cognitionem* was not published until 1566, the year after Smith had written his *Commonwealth*, and that the celebrated treatise *De la république* did not appear in its French form until 1576 or in its Latin form until 1586. It is also to be observed that the Englishman seems quite unconscious that the traditional lore of the various forms of government has been challenged at a most important point. If there is any proposition that Bodin is anxious to establish as well in his early *Methodus* as in his mature *De Republica*, surely it is that there are three polities and three only—monarchy, aristocracy and democracy—and that “mixed forms” are but idle conceits. Bodin, so it seems to us, would have regarded Smith as a feeble thinker, and Smith if he had been impressed by Bodin's opinions would have felt bound to argue for the possibility of “mixed forms” rather than quietly to state that all or nearly all the polities that appear in real life are more or less mixed. On the other hand, Bodin makes no mention of Smith in the somewhat lengthy passage in which he proves that the English constitution is simply monarchical and refuses to our parliaments any share of sovereignty. Incidentally he tells how he has obtained certain information about England from English ambassadors in France; but the ambassadors whom he names are Valentine Dale and Thomas Randolph, who were sent

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to France after Smith's return¹. Bodin himself came to England with the Duke of Anjou in 1579, had converse with Dr Dale² and, discovering that a lecturer at Cambridge was already struggling with the French text of his book, determined to translate it into Latin³. The publisher of the Latin version, issued at Paris in 1586, boasts on the title-page of privileges granted by the Emperor, the King of France, and the Queen of England. An English translation was published by Richard Knolles in 1606, and there can be no doubt that this celebrated treatise affected the current of political thought in England; but it did so by attacking Smith's vague views on the doctrine of sovereignty. Intercourse between Smith and Hotman seems as likely as intercourse between Smith and Bodin, and the Englishman would, so it seems to us, have found more to approve in the *Franco-Gallia* than in the *Six livres de la république*. Some men, Sir Thomas says, "blame Lewes the XI. for bringing the administration royall of Fraunce from the lawful and regulate raigne to the absolute and tyrannicall power and gouvernement" (I. 7). The reference may very probably be to Hotman. For Hotman definitely dates the era of degeneracy in the French judicial system from the time of Louis XI.; and to hold converse with men who maintained opinions of this sort was one of the duties of an English ambassador who went to France in 1562 when the English Queen was giving armed aid to the Huguenots. More-

¹ *Les six livres de la république*, Lyon, 1593, vol. I. p. 139: "comme i'ay sçeu de M. Dail, Ambassadeur d'Angleterre, homme d'honneur et de sçavoir." *Ibid.* vol. II. p. 742: "comme i'ay sçeu par l'Ambassadeur Randon Anglois." These last words seem not to be represented in the Latin text.

² *De republica libri sex*, Paris, 1586, p. 507: "Dalus magister libellorum."

³ See the prefatory epistle.

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over there are few points on which Hotman is more emphatic than in his assertions that the "reign of litigiousness" in France is due to the influence of Justinian; and this we have noted is one of the contrasts in which Smith glories—praising the English system for its satisfactory brevity and the little opportunity that it affords to "idle whot heades, busie bodies, and troublesome men in the common wealth." Hotman also, like Smith, recognizes and approves mixed forms of government. "For the form of this government" (Hotman writes regarding early France) "was the very same which the ancient philosophers, and among them Plato and Aristotle (whom Polybius imitates), judged to be the best and most excellent in the world, as being made up and constituted of a mixture and just temperament of the three kinds of government, viz. the Regal, Noble and Popular" (Eng. trans. 1711, p. 65).

It has also been surmised that Smith may have intended his book chiefly for foreign scholars and statesmen—men with whom he had conversed in France and their like. But in that case we should have expected him to write in Latin. This he could have done with ease; while he cannot have thought that many Frenchmen were going to read English. Then and later Frenchmen generally believed that even in England the English language was but the tongue of the vulgar herd. Nor can we say that if Smith wrote for his fellow-countrymen he was not meeting a potential demand. When once his book was published, new editions were soon called for. At this we have no need to be surprised. If the book told the Englishman some things about England that he knew, and perhaps knew better than its author did,

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it also told him many things that he did not know but might like to know. Even in such matters as parliamentary procedure, the three readings of the bill and so forth, we might easily overrate the extent to which what Smith tells us was matter of common knowledge among the English gentry of the time.

Turning now from discussion of the subject-matter and the purpose of the book we find there are certain textual points which require a little attention.

The text we give is the earliest,—that of 1583, which is practically, though not absolutely, identical with that of 1584. The spelling varies erratically, and in a few places there is a difference of a word or two in the reading. But we have also two manuscripts, one in the library of Trinity College, Cambridge¹, and the other in the British Museum². These differ considerably in places from the printed edition, and are closer akin to one another than the printed edition is to either. The number of petty changes of detail—*that* for *which*, *and* for *or*, *a* for *the*, etc.—is enormous, and the reproduction of these was thought to be likely to serve no good purpose, but rather to obscure the main issue. The variations however have all been carefully collated, and those which seem to possess any significance are printed in an appendix to the present edition. It will be seen that the MSS. occasionally give more satisfactory readings than the printed edition, as, for instance, when they substitute (in the last sentence of I. 12) “He againe used no rigour” for “He againe used noriture,” or (in I. 18) give us “some are called lands knights as souldiers of their land not hyred” where the printed edition has “lanceknights” and “band.” Such changes may of course be mere

¹ No. 1504.

² Harleian 1130.

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conjectural emendations of the copyist; but they may also point to the MSS. being descended in a direct line from the author's MS.¹

The first editions of the *De Republica* appeared in 1583 and 1584. In these as well as in the later editions we find certain marginal notes. Occasionally we see out in the margin some term which is being explained in the text, for example, "Monarchia," "Rex," "Tyrannus," "Dictatorship," "Just." This happens chiefly in the first few pages and is not done systematically; but the same words for the most part are found in the two MSS. of the work which have been collated for the present edition. Their appearance seems to tell us that some one, possibly the author, had set a few catch-words in the manuscript that the printer had used. But there are marginal notes of a more interesting kind, and the question arises whether they can possibly be Smith's. A few of them might be called explanatory, but most are corrective², and the corrections are hardly of a kind that an author makes in the margin of his book. Thus, for example, speaking of the trial of a lord by his peers, Smith says, "and for Judge one Lord sitteth who is Constable of England for that day." In the margin we see "Or rather high steward of England." Here if Smith had discovered his own mistake and desired to correct it, he might easily have done this by substituting "high steward" for "constable" in his text. A yet plainer indication is

¹ The reader should note the remarks in the 1583 preface about the "often transcribing" of the book and the probable faults committed by clerks and writers.

² It is perhaps intended to account for their appearance in the Preface, where the Editor (or Publisher) mentions that "some termes or other matters may seme to dissent from the usual phrase of the common lawes of this realme" and finds excuses for the inaccuracies.

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given to us by another note. Sir Thomas believed that our English word *fee* and the medieval *feodum* or *feodum* were etymologically connected with the Latin *fides*. "This," he says, "is a more likely interpretation than that which Litleton doth put in his book, who saith that *feodum idem est quod hæreditas*, which it doth betoken in no language. This happeneth many times to them who be of great wit and learning, yet not seen in many tongues, or marketh not the deduction of words which time doth alter." Over against this a note is printed, "Litleton did not interpret the word *feodum* simply, but rather define or describe the nature thereof. Litleton seen in the tongues as Sir Thomas Smith was in Litleton." This is censure and there is some asperity. The annotator has been ruffled by Smith's tone of superiority. Litleton, he says in effect, was not dabbling in etymology, and belike he was as much a master of the tongues as you are of his book. It is censure, and we must add that it is deserved censure. Litleton had said nothing that was untrue, while Smith plunges on into error misled by the fact that in his own day the word *feoffees* had begun to suggest trusteeship. He had touched a tender point, and some zealous worshipper of the sacred text of Litleton's *Tenures* has turned and rent him.

Whoever the annotator was, he can hardly have been a mere literary hack in the pay of the publisher. No publisher would wish even to this moderate extent to cast disparagement on the work of an author whom he was bringing out for the first time. But yet if the annotator was at all a well-known or conspicuous person, it is a little strange that the fact should not be notified on the title-page.

Further we observe that the annotations in the 1583

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and 1584 editions are not quite identical. The second edition omits two of the notes given in the earlier:—one at the beginning of II. 16 which reads, “Hundreds were named of townes, hils, or other markes”; and one towards the end of III. 6, with regard to the property which may pass to a woman at her husband’s death, “She shalbe endowed at the discretion of the sherife, except in few cases.” But the later edition besides other minor alterations inserts four considerable notes—those on the etymology of “yeomen,” of “constable,” and of “wapentake,” and a note in III. 8, “The sonnes of freemen of London are also free by birth, according to the custome.” Two only of the earlier notes are etymological, those on “lanceknights” (Brit. Mus. MS. “lands knights”) and on “Sir”; both of which are in I. 18,—“Verè lantz knechti, lancearius: a speareman”; and “Sire quasi Senior.” There seems a possibility that we have two annotators, the later of whom has a stronger etymological bent than the earlier.

We give the marginal notes of the 1583 edition in full; excepting the cases where they are mere indications of the contents of the text—e.g. “Domus seu familia” (I. 11); “Eques auratus. The making of a knight” (I. 18).

TEXT

...the father and mother sendeth them out in couples as it were by provining or propagation. (I. 12.)

For the eldest of dukes sonnes during his fathers life is called an earle,... (I. 17.)

NOTE

Provining or propagation is when a man layeth a branch of a Vine or Osier, or any other tree into the ground, so that it taketh roote of it selfe and may live though it be cut then from the first roote or stock.

Eldest sonnes of dukes are not earles by birth, but lordes, and take their place above earles and so are eldest sons in respect of barons.

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TEXT

Centuriatis comitiis or *tributis*.
(II. 1.)

But in those pleas and pursuities of the crowne procurer or advocate he [the prisoner] gets none. (II. 9.)

For that which in the civill lawe is called *actio* or *formula*, we call writ in English: so the Greekes called it word for word *γραφῆ*, and in our barbarous latine we name it *breve*. (II. 9.)

If in the lawe the case seeme to the Judges that sitte doubtfull, it is called a checker chamber case, and all the Judges will meete together, and what they shall pronounce to be the lawe, that is helde for right.... (II. 13.)

If the Sergeants or counsellers doe stand upon anie point in the law which is not so doubtfull, the Judges who be taken for most expert bidde him goe forward: and if he hath no other to say but standeth upon that point of lawe, that bidding goe forward is taken that he looseth his action.... (II. 13.)

...eche partie must agree to the other stil in the fact which he cannot denie.... (II. 13.)

The adverse partie or his advocates which wee call counsellers and sergeants interrogateth sometime the witnesses, and driveth them out of countenance. (II. 15.)

¹ The *ouster* of this phrase is very low Anglo-French. It should be *oultre* (Lat. *ultra*). The old phrase was *Responex oultre* (Engl. Answer over = Find some further and better answer). The change of *-re* into *-er* is common, and a parasitic *s* need not surprise us. The other *ouster* (Fr. *ôter*) may have influenced the process. (F. W. M.)

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NOTE

Alias *tribunitiis*.

Saving in appels and upon a special plea.

Actio is the parties whole suite.
Breve is the kings precept.

But sometimes it is determined by the same court onely.

This shoulde be ment of a *respondez* [*corr. respondeas*] *ouster*¹, when the opinion is against him that taketh an exception that is not peremptorie.

He may denie it by protestation.

That is not order but abuse.

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TEXT

The partie with whom they have given their sentence, giveth the enquest their dinner.... (II. 15.)

But sometime nowe in places whereof the hundred hath the name, no mention nor memorie of a towne remaineth. (II. 16.)

...his undersherife...must prepare against that time fower enquestes of xxiiii Yeomen a peece of diverse hundredes in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. (II. 19.)

So he is called three times in diverse countie daies to render himselfe to the lawe. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as ye would say: *exactus* or *actus in exilium*. (II. 19.)

These meetinges...be called quarter sessions or sessions of enquirie, because that nothing is there determined touching the malefactors, but onely the custodie of them. (II. 19.)

But for so much as everie little village hath commonly two Constables, and many times artificers, labourers and men of small abilitie be chosen. (II. 22.)

He that claimeth his Clergie, is burned forthwith in the presence of the Judges in the brawne of his hande...and is delivered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is delivered and let at large. (II. 23.)

NOTE

Courtesie and not dutie.

Hundreds were named of townes, hils, or other markes.

This is not alwaies and in all places observed, but onely concerning the ground enquest.

The use of *capias* and *exigent* upon inditementes is otherwise.

They are put to fines.

One or two Constables, hed-boroughes or tithingmen.

The deliverie to the Bishops prison, and the purgation is taken away by statute¹.

¹ See Stat. 18 Eliz. c. 7 (1576). (F. W. M.)

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TEXT

...and if he knowe any private man who purchased his inditement, and is able to pursue it, he may have an action of conspiracie against him, and a large amendes. (II. 23.)

Impoisoners, if the person die thereof, by a newe lawe made in King *Henrie* the eightes time shalbe boyled to death. (II. 24.)

And for Judge one Lord sitteth, who is Constable of England for that day. (II. 25.)

There must in the attaint no more evidence be brought in, but only that which was brought in and alledged before the first enquest. (III. 2.)

The Prince had before the waste of all their lands and possessions with other punishments, which at this present by a lawe made by parliament in the time of King *Henrie* the eight is abolished. (III. 2.)

...or to demaunde the trial by battle, wherein both the parties must either themselves in person, or else finde other for them, who be called in our Law Champions or Campions. (III. 3.)

...the partie grieved hath these two remedies, I say to require justice by grand assise, or battle upon his appeale. (III. 3.)

...if the riot be found and certified to the Kings Counsell, or if otherwise it be complained of, the partie is sent for, and he must appeare in this starre chamber. (III. 4.)

NOTE

They must be two at the least that conspired.

Quere.

Or rather high stewarde of Englande.

No more evidence on the behalfe of the plaintife, but of the defendant there may.

The statute of 23. Henrie 8. doth not abolish common lawe, but giveth a more profitable for the plaintife.

In appeale the battle is tryed by the parties onely, and in writs of right by champions.

The battle or Jurie is at the election of the defendant.

Sent for by *Subpana*.

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TEXT

All this while I speake of that which is called in French *garde noble*. (III. 5.)

So he, who had a father, which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, land let foorth and plowed to the baren, and to make amends, shall pay yet one yeres rent for reliefe.... (III. 5.)

...if he die and she take a husbände of a meaner estate by whom she shall not be called Ladie (such is the honour we doe give to women) she shall still be called Ladie with the surname of her first husbände and not of the seconde. (III. 6.)

...if the wife be enheretrix and bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is divided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaseth afterwarde, the husbände can not sell nor alienate the same.... (III. 6.)

Likewise if the husbände...die before the wife...she shall holde the one thirde part of his landes during her life as her dowrie, whether he had childe by her or no. (III. 6.)

This is a more likely interpretation than that which *Litleton* doeth put in his booke.... (III. 8.)

NOTE

Gardian in chevalrie, and gardian in Socage.

But the Lorde shalbe punished for the wast, by losse of the ward: or treble damages, if that suffice not.

She is no Ladie by the law although so called of courtisie.

It is avoidable after the husbändes death, except it be for xxi yeares or three lives according to the statute, or except they levie a fine.

She shalbe endowed at the discretion of the sherife, except in few cases.

Litleton did not interpret the word *feodum* simply, but rather define or describe the nature thereof. Litleton seene in the tongues as Sir Thomas Smith was in Litleton.

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TEXT

...whosoever sueth for any thing to Rome or in any spirituall court for that cause or action which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande he falleth into a *praemunire*.... (III. 9.)

NOTE

Which ought to be tried in the temporall court.

The book, it is clear, has come in 1583 into the hands of someone who thinks, and, so it seems to us, rightly thinks, that he can correct Smith's law. The annotator of the 1584 edition it may be noted (whether he be the same as the earlier annotator or not, is not clear) has a leaning towards etymology, and it may be worth our while to notice the places at which he expresses dissent. There is the difficult *yeoman*. Smith observes that in "lowe dutch" *yonker* betokens "a meane gentleman or a gay fellow," and he suggests that our yeomen serving in the wars picked up this term and applied it in the form of "yonker man" to each other "by mockage or in sport." The annotator disagrees. He holds that "*yonker* commeth of *young herre* which is a son and heire to a gentleman, or a young gentleman"; and he thinks that our *yeoman* derives from *yeman*, which in the Saxon is a married man. As to *constable*, Smith favours *kinnyngstable*, "as ye would say a man established by the king." The annotator accepts *kinnyngstable*, but takes this to mean *regia virgula*, the rod or wand signifying the king's power or authority, represented among us by the constable's staff. Then as to *scaccarium*, Smith does not seem to see that there is any etymological connection with *exchequer* and tells us that, according to some, it should be *statarium*, because in the exchequer was the stable place to account for the revenues of the crown. On the other hand, the annotator says

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that "*scats* in ancient Saxon is that which we by a borrowed terme call tresure, whereof is derived *Scaccarium* signifying a court dealing with the kinges treasure or revenues, and also *escaetor*, that is an officer which imploieith the kinges profit." These notes seem to proceed from a man who himself is "seen in the tongues," and whence he got his *scats*, if by "ancient Saxon" he meant a language once spoken in England, might, we take it, be a curious inquiry¹.

So much for our earliest editions of the text. The consideration of the later, together with certain "additional matter" which is incorporated in them, is reserved for an appendix. A second appendix presents the passages in Harrison of which Smith seems to have availed himself in his revision of his first manuscript; and the more important variant readings of the text which are furnished by the MSS. at Trinity College, Cambridge, and at the British Museum are given in a third.

¹ For *sceatt* see Chadwick, *Anglo-Saxon Institutions*, p. 7.

DE
REPUBLICA
ANGLORUM.

*The maner of Governement or
policie of the Realme of Eng-
land, compiled by the Honora-
ble Sir Thomas Smyth Knight,
Doctour of both the lawes, and
one of the principal Secre-
taries unto the two most wor-
thy Princes, King Edward
the sixt, and Queene
Elizabeth.*

Seene and allowed.

AT LONDON,

Printed by Henrie Middleton
for Gregorie Seton,

Anno Domini
1583.

WALL GROUP

To the Reader

TO conceale the graces inspired by God, or the giftes ingrafted by nature, or the vertues achieved unto ourselves by industrie, in all ages and of all wise men was accounted unduetifulnesse, unkindnesse & impietie unto that commonwealth, in the which, and unto the which we are both bred and borne: but to suppress the worthie works of any author, may justly be judged not only injurie to the person, but even envie at the whole world. Wherefore chauncing upon this short discourse compiled by the honorable knight sir Thomas Smyth, and considering that the same could not but be a great light unto the ignorant, & no lesse delight unto the learned in the lawes and policie of sundrie regiments: I thought it part of my dutie, aswel for reviving of the fame of so notable a man, as for the publike imparting of so pythie a treatise, to present the same unto thy indifferent and discreete judgement. Wherein although the errors & rashnes of Scribes, appearing in the contrarietie & corruption of coppies, happening both by the length of time sithens the first making, as also by the often transcribing might justly have been mine excuse or rather discourage: yet weying the authoritie of the

TO THE READER

author together with the gravitie of the matter, I made no doubt but that the reverence due unto the one, & the recompence deserved by the other would easily countervail all faults committed by a clarke & writer. And whereas some termes or other matters may seme to dissent from the usual phrase of the common lawes of this realme: notwithstanding to him that will consider that the profession of the maker was principally in the civil lawes, and therefore not to be expected as one excellent in both, & also that the finishing of this worke was in Fraunce farre from his librarie, and in an ambassad even in the midst of waightie affaires, it cannot nor ought not without great ingratitude be displesant or in any sort disliking. Wherefore (gentle Reader) accept in good part my zeale and this honorable mans travaile: assuring thy self that the same framed by an expert workemaister, and forged of pure and excellent mettall, will not faile in proving to be a right commodious instrument. Vale.

A NECESSARIE

Table of all the principall matters contained in this Booke.

<p>OF the diversities of common wealthes or governements. Chapter 1.</p> <p>What is just or Lawe in everie common wealth or governement.</p> <p>An other division of common wealthes. chap. 3.</p> <p>Example of chaunges in the manner of governement. chap. 4.</p> <p>Of the question what is right and just in everie common wealth.</p> <p>That common wealths or governements are not (most commonly) simple but mixt. chap. 6.</p> <p>The definition of a King and of a Tyrant. chap. 7.</p> <p>Of the absolute king. chap. 8.</p> <p>Of the name king and the administration of England. chap. 9.</p> <p>What is a common wealth, and the partes thereof. chap. 10.</p> <p>The first sort or beginning of an house or familie called <i>οικονομία</i>. chap. 11.</p> <p>The first & natural beginning of a kingdome, in Greeke <i>βασιλεία</i>. chap. 12.</p> <p>The first and naturall beginning of the rule of a fewe of the best men called in Greeke, <i>Ἀριστοκρατία</i>. ca. 13.</p> <p>The first originall or beginning of the rule of the multitude called <i>Πολιτεία</i> or <i>Δημοκρατία</i>. chap. 14.</p> <p>That the common wealth or policie must be according to the nature of the people. chap. 15.</p> <p>The division of partes and persons of the common wealths. chap. 16.</p> <p>The first part of Gentlemen of England called <i>Nobilitas major</i>. chap. 17.</p> <p>Of the second sort of Gentlemen of England called <i>Nobilitas minor</i>, and first of knights. chap. 18.</p>	<p>Chapter 1.</p> <p>Pagina 9.</p> <p>cap. 2.</p> <p>pag. 10.</p> <p>pag. 11.</p> <p>pag. 12.</p> <p>chap. 5.</p> <p>pag. 13.</p> <p>pag. 14.</p> <p>pag. 14.</p> <p>pag. 16.</p> <p>pag. 18.</p> <p>pag. 20.</p> <p>pag. 22.</p> <p><i>βασιλεία</i>. pag. 23.</p> <p>ca. 13. pa. 25.</p> <p>pag. 26.</p> <p>pag. 28.</p> <p>chap. 16.</p> <p>pag. 29.</p> <p>chap. 17.⁷</p> <p>pag. 31.</p> <p>pag. 32.</p>
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FINIS.

DE
REPUBLICA
ANGLORUM.

*The maner of governement or
policie of the REALME of
ENGLANDE.*

Of the diversities of common
wealthes or governement.

CHAP. I.

THEY that have written heretofore of Common wealthes, have brought them into three most simple and speciall kindes or fashions of governement. The first where one alone doth governe, is called of the Greekes *Μοναρχία*, the second, where the smaller number, commonly called of them *Ἀριστοκρατία*, and the thirde where the multitude doth rule *Δημοκρατία*. To rule, is understoode to have the highest and supreme authoritie of commaundement. That part or member of the common wealth is saide to rule which doth controwle, correct, and direct all other members of the common wealth. That part which doth rule, define and commaund according to the forme of the governement, is taken in everie common wealth to be just and lawe: As a rule is alway to be understoode

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to be straight, and to which all workes be to be conformed, and by it to be judged: I doe not meane the *Lesbians* rule which is conformed to the stone: but the right rule whereby the Artificer and the Architect doe judge the straightnesse of everie mans worke, he to be reckoned to make his worke perfectest, who goeth nearest to the straightnesse.

What is just or Lawe in everie common wealth or governement.

CHAP. 2.

N Owe it doth appeare, that it is profitable to everie common wealth (as it is to every thing generally and particularly) to be kept in her most perfect estate. Then if that part which doth beare the rule, doe commaund that which is profitable to it, and the commaundement of that part which doeth rule on that sort, is to be accepted in every common wealth respectively to be just (as we have said before): it must needes follow, that the definition which *Thrasimachus* did make, that to be just which is the profite of the ruling and most strong part (if it be meant of the Citie or common wealth) is not so farre out of the way, (if it be civillie understoode) as *Plato* would make it. But as there is profitable and likelyhoode of profite, so there is right and likelyhoode of right. And as well may the ruling and Sovereigne part commaund that which is not his profite, as the just man may offend (notwithstanding his just and true meaning) when he would amend that which is amisse, and helpe the common wealth, and doe good unto it. For in

ANGLORUM LIB. 1.

asmuch as he attempteth to doe contrarie to the Lawe which is alreadie put, he therefore by the lawe is justly to be condemned, because his doing is contrarie to the lawe and the ordinance of that part which doth commaunde.

An other division of common wealthes.

CHAP. 3.

BUt this matter yet taketh an other doubt: for of these maner of rulinges by one, by the fewer part, and by the multitude or greater number, they which have more methodically and more distinctly and perfectly written upon them, doe make a subdivision: and dividing eche into two, make the one good and just, and the other evill and unjust: as, where one ruleth, the one they call a king or Βασιλεὺς, the other τύραννος, a tyrant: where the fewer number, the one they name a governing of the best men ἀριστοκρατίαν, or *Remp. optimatum*, the other of the usurping of a few Gentlemen, or a few of the richer and stronger sort ὀλιγαρχίαν, or *Paucorum potestatem*: and where the multitude doth governe, the one they call a common wealth by the generall name πολιτείαν, or the rule of the people Δημοκρατίαν, the other the rule or the usurping of the popular or rascall and viler sort, because they be moe in number Δημοκρατίαν ἀπαντῶν.

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Example of chaunges in the maner of Governement.

CHAP. 4.

IN common wealthes which have had long continuance, the diversities of times have made all these maners of ruling or government to be seene: As in Rome: kinges, *Romulus*, *Numa*, *Servius*: tyrantes, *Tarquinius*, *Sylla*, *Cæsar*: the rule of best men, as in time when the first Consuls were: and the usurping of a few, as of the Senators after the death of *Tarquinius*, and before the succession of the Tribunate, and manifestly in the *Decemvirate*, but more perniciously in the *Triumvirate* of *Cæsar*, *Crassus*, and *Pompeius*: and afterwarde in the *Triumvirate* of *Octavius*, *Antonius*, and *Lepidus*: The common wealth and rule of the people, as in the expulsiing of the *decemviri* and long after, especially after the law was made, either by *Horatius*, or (as some would have it) *Hortentius*, *quod plebs sciverit, id populum teneat*: And the ruling and usurping of the popular and rascall, as a litle before *Scylla* his reigne, and a litle before *Caius Cæsars* reigne. For the usurping of the rascality can never long endure, but necessarily breedeth, and quickly bringeth forth a tyrant. Of this, hath *Athens*, *Syracuse*, *Lacedæmon* and other old auncient ruling Cities had experience, and a man neede not doubt but that other common wealthes have followed the same rate. For the nature of man is never to stand still in one maner of estate, but to grow from the lesse to the more, and decay from the more againe to the lesse, till it come to the fatall end and destruction, with many

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turnes and turmoyles of sicknesse and recovering, sel-
dome standing in a perfect health, neither of a mans
bodie it selfe, nor of the politique bodie which is com-
pact of the same.

Of the question what is right and just in
everie common wealth.

CHAP. 5.

SO when the common wealth is evill governed by
an evill ruler and unjust (as in the three last
named which be rather a sicknesse of the politique bodie
than perfect and good estates) if the lawes be made,
as most like they be alwayes to maintaine that estate:
the question remaineth whether the obedience of them
be just, and the disobedience wrong: the profit and
conservation of that estate right and justice, or the
dissolution: and whether a good and upright man, and
lover of his countrie ought to maintaine and obey
them, or to seeke by all meanes to abolish them, which
great and hautie courages have often attempted: as
Dion to rise up against *Dionysius*, *Thrasibulus* against
the xxx. tyrantes, *Brutus* and *Cassius* against *Cæsar*,
which hath bin cause of many commotions in common
wealthes, whereof the judgement of the common
people is according to the event and successe: of them
which be learned, according to the purpose of the
doers, and the estate of the time then present. Cer-
taine it is that it is alwayes a doubtfull and hasardous
matter to meddle with the chaunging of the lawes
and government, or to disobey the orders of the rule
or government, which a man doth finde alreadie
established.

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That common wealthes or governements
are not most commonly simple but mixt.

CHAP. 6.

NOW although the governements of common
wealthes be thus divided into three, and cutting
ech into two, so into sixe: yet you must not take that
ye shall finde any common wealth or government
simple, pure and absolute in his sort and kinde, but as
wise men have divided for understandings sake and
fantasied *iiij.* simple bodies which they call elementes,
as fire, ayre, water, earth, and in a mans bodie foure
complexions or temperatures, as cholericke, sanguine,
phlegmatique, and melancolique: not that ye shall
finde the one utterly perfect without mixtion of the
other, for that nature almost will not suffer, but under-
standing doth discerne ech nature as in his sinceritie:
so seldome or never shall you finde common wealthes
or government which is absolutely and sincerely made
of any of them above named, but always mixed with
an other, and hath the name of that which is more
and overruleth the other alwayes or for the most part.

The definition of a king and of a tyrant.

CHAP. 7.

WHERE one person beareth the rule they define
that to be the estate of a king, who by suc-
cession or election commeth with the good will of the
people to that government, and doth administer the
common wealth by the lawes of the same and by
equitie, and doth seeke the profit of the people as much

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as his owne. A tyraunt they name him, who by force commeth to the Monarchy against the will of the people, breaketh lawes alreadie made at his pleasure, maketh other without the advise and consent of the people, and regardeth not the wealth of his communes but the advancement of him selfe, his faction, and kindred. These definitions do containe three differences: the obtaining of the authoritie, the maner of administration thereof, and the butte or marke whereunto it doth tend and shoote. So as one may be a tyrant by his entrie and getting of the governement, and a king in the administration thereof. As a man may thinke of *Octavius* and peradventure of *Sylla*. For they both comming by tyranny and violence to that state, did seeme to travaile verie much for the better order of the common wealth, howbeit either of them after a diverse maner. An other may be a king by entrie, and a tyrant by administration, as *Nero*, *Domitian*, and *Commodus*: for the empire came to them by succession, but their administration was utterly tyrannicall, of *Nero* after five yeares, of *Domitian* and *Commodus* very shortly upon their new honour. Some both in the comming to their Empire, and in the butte which they shoote at, be kings, but the maner of their ruling is tyrannicall: as many Emperous after *Cæsar* and *Octavius*, and many Popes of Rome. The Emperours claime this tyrannicall power by pretence of that Rogation or *plebiscitum*, which *Caius Cæsar* or *Octavius* obtained, by which all the people of Rome did conferre their power and authority unto *Cæsar* wholly.

The Pope groundeth his from Christ (*cui omnis potestas data est in cælo et in terra*) whose successor he pretendeth to be: yet the generall Councils make a

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strife with him, to make the Popes power either *Aristocratian* or at the least *legitimum regnum*, and would faine bridle that *absolutam potestatem*. Some men doe judge the same of the kinges of Fraunce, and certaine Princes of Italie and other places, because they make and abrogate lawes and edictes, lay on tributs and impositions of their own will, or by the private Counsell and advise of their friends and favorites onely, without the consent of the people. The people I call that which the word *populus* doth signifie, the whole body and the three estates of the common wealth: and they blame *Lewes* the xi. for bringing the administration royall of Fraunce, from the lawful and regulate raigne, to the absolute and tyrannicall power and government. He himselve was wont to glory and say, he had brought the crowne of Fraunce *hors de page*, as one would say out of Wardship.

Of the absolute King.

CHAP. 8.

Other do call that kinde of administration which the Greekes do call, *παμβασιλείαν*, not tyranny, but the absolute power of a King, which they would pretende that everie King hath, if he would use the same. The other they call *βασιλείαν νόμικην* or the Royall power regulate by lawes: of this I will not dispute at this time. But as such absolute administration in time of warre when all is in armes, and when lawes hold their peace because they cannot be heard, is most necessarie: so in time of peace, the same is verie daungerous, aswell to him that doth use

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it, and much more to the people upon whom it is used: whereof the cause is the frailtie of mans nature, which (as *Plato* saith) cannot abide or beare long that absolute and uncontrowled authoritie, without swelling into too much pride and insolencie. And therefore the Romanes did wisely, who woulde not suffer any man to keepe the *Dictatorship* above sixe monethes, because the *Dictators* (for that time) had this absolute power, which some Greekes named a lawfull tyrannie for a time. As I remember, *Aristotle*, (who of all writers hath most absolutely and methodically treated of the division and natures of common wealthes) maketh this sort of government to be one kind of kings. But all commeth to one effect: for at the first, all kinges ruled absolutely, as they who were either the heades and most ancient of their families, derived out of their own bodies, as *Adam*, *Noa*, *Abraham*, *Jacob*, *Esau*, reigning absolutely over their owne children and bondmen as reason was: or else in the rude world amongst barbarous and ignorant people, some one then whom God had endewed with singular wisdom to invent things necessary for the nourishing and defence of the multitude, and to administer justice did so farre excell other, that all the rest were but beastes in comparison of him, and for that excellencie willingly had this authoritie given him of the multitude, and of the Gentils when he was dead and almost when he was yet living, was taken for a God, of others for a Prophet. Such among the Jewes were *Moses*, *Josua*, and the other Judges, as *Samuel*, &c. *Romulus* and *Numa* amongst the Romanes, *Lycurgus* and *Solon* and diverse other among the Greekes, *Zamolxis* among the Thracians, *Mahomet* among the Arabians: And this kinde

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of rule among the Greekes is called *τύραννις*, which of it selfe at the first was not a name odious: But because they who had such rule, at the first, did for the most part abuse the same, waxed insolent and proude, unjust and not regarding the common wealth, committed such actes as were horrible and odious, as killing men without cause, abusing their wives and daughters, taking and spoyling all mens goods at their pleasures, and were not shepherdes as they ought to be, but rather robbers and devourers of the people, wherof some were contemners of God, as *Dionysius*, other while they lyved like divils, and would yet be adored and accompted for Gods, as *Caius Caligula* and *Domitian*: that kind of administration and maner also, at the first not evill, hath taken the signification and definition of the vice of the abusers, so that now both in Greeke, Latine, and English a tyrant is counted he, who is an evill king, and who hath no regard to the wealth of his people, but seeketh onely to magnifie himselfe and his, and to satisfie his vicious and cruell appetite, without respect of God, of right or of the law: because that for the most part they who have had that absolute power have benee such.

Of the name king and thadministration of Englande.

CHAP. 9.

THat which we call in one syllable king in english, the olde english men and the Saxons from whom our tongue is derived to this day calleth in two syllabes *cyning*, which whether it cometh of *cen* or *ken* which betokeneth to know and understand, or

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can, which betokeneth to be able or to have power, I can not tell. The participle absolute of thone we use yet, as when we say a cunning man, *Vir prudens aut sciens*: the verbe of thother as I can do this, *possum hoc facere*. By olde and auncient histories that I have red, I do not understand that our nation hath used any other generall authoritie in this realme neither Aristocraticall, nor Democraticall, but onely the royall and kingly majestie which at the first was divided into many and sundrie kinges, each absolutely reigning in his countrie, not under the subjection of other, till by fighting thone with thother, the overcommed alwayes falling to the augmentation of the vanquisher and overcommer, at the last the realme of England grew into one Monarchie. Neither any one of those kinges, neither he who first had all, tooke any investiture at the hand of Themperour of Rome or of any other superiour or forraine prince, but helde of God to himselfe, and by his sword his people and crowne, acknowledging no prince in earth his superiour, and so it is kept and holden at this day. Although king *John* (by the rebellion of the nobilitie ayded with the daulphin of Fraunce his power) to appease the Pope who at that time possessing the consciences of his subjectes was then also his enemy and his most greevous torment (as some histories do write) did resigne the crowne to his legate *Pandulphus*, and tooke it againe from him as from the Pope by faith and homage, and a certain tribute yearly. But that act being neither approved by his people, nor established by act of parliament, was forthwith and ever sithens taken for nothing, either to binde the king, his successors or subjectes.

✓ see Carlyle

✓

✓

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What is a common wealth, and the
partes thereof.

CHAP. 10.

TO be better understood hereafter, it is necessarie yet to make a third division of the common wealth by the partes thereof. A common wealth is called a society or common doing of a multitude of free men collected together and united by common accord and covenantes among themselves, for the conservation of themselves aswell in peace as in warre. For properly an host of men is not called a common wealth but abusively, because they are collected but for a time and for a fact: which done, ech divideth himselfe from others as they were before. And if one man had as some of the old Romanes had (if it be true that is written) v. thousande or x. thousande bondmen whom he ruled well, though they dwelled all in one citie, or were distributed into diverse villages, yet that were no common wealth: for the bondman hath no communion with his master, the wealth of the Lord is onely sought for, and not the profit of the slave or bondman. For as they who write of these thinges have defined, a bondman or a slave is as it were (saving life and humane reason) but the instrument of his Lord, as the axe, the sawe, the chessyll and gowge is of the charpenter. Truth it is the charpenter looketh diligently to save, correct and amend all these: but it is for his own profit, and in consideration of him selfe, not for the instrumentes sake. And as these be instruments of the charpenter, so the plow, the cart, the horse, oxe or asse, be instrumentes

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of the husbandman: and though one husbandman had a great number of all those and looked well to them, it made no common wealth nor could not so be called. For the private wealth of the husbandman is onely regarded, and there is no mutuall societie or portion, no law or pleading betweene thone and thother. And (as he sayth) what reason hath the pot to say to the potter, why madest thou me thus? or why dost thou break me after thou hast made me? even so is the bondman or slave which is bought for monie: for he is but a reasonable and lyving instrument the possession of his Lorde and master, reckoned among his goods, not otherwise admitted to the societie civill or common wealth, but is part of the possession and goods of his Lorde. Wherefore except there be other orders and administrations amonst the Turks, if the prince of the Turkes (as it is written of him) doe repute all other his bondmen and slaves (him selfe and his sonnes onely freemen) a man may doubt whether his administration be to be accompted a common wealth or a kingdome, or rather to be reputed onely as one that hath under him an infinite number of slaves or bondmen among whom there is no right, law nor common wealth compact, but onely the will of the Lorde and signior. Surely none of the olde Greekes would call this fashion of government *Remp.* or *πολιτείαν* for the reasons which I have declared before.

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The first sort or beginning of an house
or familie called *οικονομία*.

CHAP. II.

Then if this be a societie, and consisteth onely of freemen, the least part therof must be of two. The naturalest and first conjunction of two toward the making of a further societie of continuance is of the husband and of the wife after a diverse sorte ech having care of the familie: (the man to get, to travaile abroad, to defende: the wife, to save that which is gotten, to tarrie at home to distribute that which commeth of the husbandes labor for the nurtriture of the children and family of them both, and to keepe all at home neat and cleane.) So nature hath forged ech part to his office, the man sterne, strong, bould, adventerous, negligent of his beautie, and spending. The women weake, fearefull, faire, curious of her bewtie and saving. Either of them excelling other in wit and wisdom to conduct those thinges which appertaine to their office, and therefore where their wisdom doth excell, therein it is reason that ech should governe. And without this societie of man, and woman, the kinde of man coulde not long endure. And to this societie men are so naturally borne that the prince of all Philosophers in consideration of natures was not afraide to say that a man by nature is rather desirous to fellow himselfe to another and so to live in couple, than to adherd himselfe with many. Although of all thinges or lyuing creatures a man doth shew him selfe most politique, yet can he not well live without the societie and fellowship ciuill. He that can

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live alone saith *Aristotle* is either a wild beast in a mans likenes, or else a god rather than a man. So in the house and familie is the first and most naturall (but private) apparance of one of the best kindes of a common wealth, that is called *Aristocratia* where a few and the best doe governe, and where not one alwaies: but sometime and in some thing one, and sometime and in some thing another doth beare the rule. Which to maintaine for his part God hath given to the man great wit, bigger strength, and more courage to compell the woman to obey by reason or force, and to the woman bewtie, faire countenance, and sweete wordes to make the man to obey her againe for love. (Thus ech obeyeth and commaundeth other, and they two togeather rule the house.) The house I call here the man, the woman, their children, their servauntes bonde and free, their cattell, their housholde stuffe, and all other things, which are reckoned in their possession, so long as all these remaine togeather in one, yet this cannot be called *Aristocratia*, but *Metaphoricè*, for it is but an house, and a litle sparke resembling as it were that government.

The first and naturall beginning of a
kingdome in Greeke βασιλεία.

CHAP. 12.

BUt for so much as it is the nature of all things to encrease or decrease, this house thus encreasing and multiplying by generation, so that it cannot wel be comprehended in one habitation, and the children waxing bigger, stronger, wiser, and there-

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upon naturally desirous to rule, the father and mother sendeth them out in couples as it were by provining or propagation. And the childe by mariage beginneth as it were to roote towards the making of a new stocke, and thereupon an other house or familie. So by this propagation or provining first of one, and then another, and so from one to another in space of time, of many howses was made a streete or village, of many streetes and villages joyned together a citie or borough. And when many cities, boroughes and villages were by common and mutuall consent for their conservation ruled by that one and first father of them all, it was called a nation or kingdome. And this seemeth the first and most natural beginning and source of cities, townes, nations, kingdomes, and of all civill societies. For so long as the great grandfather was alive and able to rule, it was unnaturall for any of his sonnes or ofspring to strive with him for the superioritie, or to go about to governe or any wise to dishonour him from whom he had received life and being. And therefore such a one doth beare the first and natural example of an absolute and perfect king. For he loved them as his owne children and nephewes, cared for them as members of his owne body, provided for them as one having by long time more experience than any one or all of them. They againe honoured him as their father of whose bodie they came, obeyed him for his great wisdom and forecast, went to him in doubtfull cases as to an oracle of God, feared his curse and malediction as proceeding from Gods owne mouth. He againe used noriture: for ech paine put upon them, he esteemed as laide upon himselfe.

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The first and naturall beginning of the rule
of a few of the best men called in Greeke
Αριστοκρατεία.

CHAP. 13.

BUt when that great grandfather was dead, the
sonnes of him and brethren among themselves
not having that reverence to any, nor confidence of
wisdom in any one of them, nor that trust thone
to thother, betweene whome (as many times it fareth
with brethren) some strifes and brawlinges had before
arisen: To defende themselves yet from them which
were walsh and strangers, necessarily agreed among
themselves to consult in common, and to beare rule
for a time in order, now one, now another: so that
no one might beare alwaies the rule, nor any one be
neglected. And by this meanes if anie one fayled
during his yere or time by ignoraunce, the next (being
either wiser of himselfe, or else by his brothers error
and fault) amended it. And in the meane while, at
diverse and most times when urgent necessitie did
ocurre, they consulted all those heads of families
together within themselves, howe to demeane and order
their matters, best for the conservation of themselves, and
ech of their families, generally and particularly. Thus
a few being heades and the chiefe of their families,
equall in birth and nobilitie, and not much different
in riches, governed their owne houses and the descen-
dentes of them particularly, and consulted in common
upon publike causes, agreeing also upon certaine lawes
and orders to be kept amongst them. So the best,

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chiefest and sagest did rule, and thother part had no cause to strive with them, nor had no cause nor apparance to compare with anie of them, neither for age nor discretion, nor for riches or nobilitie. The rulers sought ech to keepe and maintaine their posteritie, as their sonnes and nephewes, and such as shoulde succede them and carie their names when they were deade, and so render them being mortall by nature immortall by their fame and succession of posteritie: having most earnest care to maintaine still this their cousinage and common familie aswell against forraigne and barbarous nations, which were not of their progenie, tongue, or religion, as against wilde and savage beasts. This seemeth the naturall source and beginning or image of that rule of the fewer number, which is called of the Greekes *Αριστοκρατεία* and of the Latines *optimatum respublica*.

✓ The first originall or beginning of the rule
of the multitude called *πολιτεία* or *Δημοκρατία*.

CHAP. 14.

NOW as time bringeth an ende of all thinges, these brethren being all dead, and their ofspring encreasing daily to a great multitude, and the reverence due the old fathers in such and so great number of equals fayling by the reason of the death or doting of the Elders: eche owing their merites of education apart to their fathers and grandfathers, and so many arising and such equalitie among them, it was not possible that they should be content to be governed by a fewe. For two things being such as for the

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which men in society and league doe most strive, that is honour and profite no man of free courage can be contented to be neglected therein, so that they were faine of necessitie to come to that, that the more part should beare the price away in election of magistrates and rulers. So that either by course or by lot ech man in turne might be receaved to beare rule and have his part of the honour, and (if any were) of the profit, which came by administration of the common wealth. For whosoever came of that old great grandfathers race, he accompted him selfe as good of birth as any other. For service to the common wealth all or such a number had done it, as they coulde not be accompted few. And if a few would take upon them to usurpe over the rest, the rest conspiring together would soone be master over them, and ruinate them wholly. Whereupon necessarily it came to passe that the common wealth must turne and alter as before from one to a few, so now from a few to many and the most part, ech of these yet willing to save the politicke bodie, to conserve the authoritie of their nation, to defende themselves against all other, their strife being onely for empire and rule, and who should doe best for the common wealth, wherof they would have experience made by bearing office and being magistrates. This I take for the first and naturall beginning of the rule of the multitude which the Greekes called *Δημοκρατία*: the Latines some *Respublica* by the generall name, some *populi potestas*, some *census potestas*, I cannot tell howe latinely.

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That the common wealth or policie must
be according to the nature of the people.

CHAP. 15.

BY this processe and discourse it doth appeare that the mutations and changes of fashions of government in common wealthes be naturall, and do not alwayes come of ambition or malice: And that according to the nature of the people, so the commonwealth is to it fit and proper. And as all these iii. kindes of common wealthes are naturall, so when to ech partie or espece and kinde of the people that is applied which best agreeth like a garment to the bodie or shoe to the foote, then the bodie politique is in quiet, and findeth ease, pleasure and profit. But if a contrary forme be given to a contrary maner of people, as when the shoe is too litle or too great for the foote, it doth hurt and encomber the convenient use thereof, so the free people of nature tyrannized or ruled by one against their willes, were he never so good, either faile of corage and wexe servile, or never rest untill they either destroie their king and them that would subdue them, or be destroyed themselves: And againe another sort there is which without being ruled by one prince but set at libertie cannot tell what they shoulde doe, but either through insolencie, pride, and idlenes will fall to robbery and all mischief, and to scatter and dissolve themselves, or with foolish ambition and private strife consume one another and bring themselves to nothing. Of both these two we have histories enough to beare witnesse, as the Greekes, Romanes, Samnites, Danes, Vandals, and others. Yet must you not thinke, that al common wealthes, ad-

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ministrations and rulings began on this sort, by provining or propagation, as is before written, but many times after a great battle and long war the captaine who led a multitude of people, gathered peradventure of diverse nations and languages, liking the place which he hath by force conquered, tarieth there, and beginneth a common wealth after this maner, and for the most part a kingdome. As the Gothes and Lumbardes in Italie, the Frenchmen in Gaule, the Sarasins in Spaine and part of Fraunce, the Saxons in great Brittain, which is nowe called Englande: of which when that one and chiefe prince is dead, the nobler sort consult among themselves, and either choose an other head and king, or divide it into more heads and rulers, so did the Lumbards in Italie, and the Saxons in England, or take at the first a common rule and popular estate, as the Zwisers did in their cantons and do yet at this day, or else admit the rule of a certaine fewe, excluding the multitude and commualtie, as the Paduans, Veronenses, and Venetians have accustomed.

The division of the parts and persons
of the common wealth.

CHAP. 16.

TO make all things yet cleare before, as we shal go, there ariseth another division of the partes of the common wealth. For it is not enough to say that it consisteth of a multitude of houses and families which make stretes and villages, and the multitude of the stretes and villages make townes, and the multitude of townes the realme, and that freemen be

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considered only in this behalf, as subjects and citizens of the commonwealth, and not bondmen who can beare no rule nor jurisdiction over freemen, as they who be taken but as instruments and the goods and possessions of others. In which consideration also we do reject women, as those whom nature hath made to keepe home and to nourish their familie and children, and not to medle with matters abroade, nor to beare office in a citie or common wealth no more than children and infantes: except it be in such cases as the authoritie is annexed to the bloud and progenie, as the crowne, a dutchie, or an erledome for there the blood is respected, not the age nor the sexe. Whereby an absolute Queene, an absolute Dutches or Countesse, those I call absolute, which have the name, not by being married to a king, duke, or erle, but by being the true, right and next successors in the dignitie, and upon whom by right of the blood that title is descended: These I say have the same authoritie although they be women or children in that kingdome, dutchie or earledome, as they shoulde have had if they had bin men of full age. For the right and honour of the blood, and the quietnes and suertie of the realme, is more to be considered, than either the tender age as yet impotent to rule, or the sexe not accustomed (otherwise) to intermeddle with publicke affaires, being by common intendment understood, that such personages never do lacke the counsell of such grave and discrete men as be able to supplie all other defectes. This (as I sayde) is not enough: But the division of these which be participant of the common wealth is one way of them that beare office, the other of them that beare none: the first are called magistrates, the

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second private men. Another the like was among the Romanes of *Patritij* and *plebei*, thone striving with thother a long time, the *patricij* many yeares excluding the *plebei* from bearing rule, untill at last all magistrates were made common between them: yet was there another division of the Romanes into *senatores*, *equites* and *plebs*: the Greekes had also *ἐυγενεῖς καὶ Δημοκρατικοὺς*. The French have also at this day, *les nobles* and *la populaire*, or *gentils homes* and *villaines*: we in England divide our men commonly into foure sortes, gentlemen, citizens, yeomen artificers, and laborers. Of gentlemen the first and chiefe are the king, the prince, dukes, marquises, earles, vicountes, barrons, and these are called *κατ' ἐξοχήν* the nobility, and all these are called Lords and noblemen: next to these be knightes, esquiers and simple gentlemen.

Of the first part of gentlemen of englande
called *Nobilitas maior*.

CHAP. 17.

Dukes, marquises, erles, vicountes, and barrons, either be created by the prince or come to that honor by being the eldest sonnes, as highest and next in succession to their parentes. For the eldest of dukes sonnes during his fathers lyfe is called an earle, an earles sonne is called by the name of a vicount, or baron, or else according as the creation is. The creation I cal the first donation and condition of the honour (given by the prince, for good service done by him and advauncement that the prince will bestowe

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uppon him) which with the title of that honour is commonly (but not alwayes) given to him and to his heires, males onely: the rest of the sonnes of the nobilitie by the rigor of the lawe be but esquiers, yet in common speeche, all dukes and marquises sonnes, and the eldest sonne of an earle be called Lordes. The which name commonly doth agree to none of lower degree than barrons, excepting such onely, as be thereunto by some speciall office called. The barrony or degree of Lordes doeth answer to the dignitie of the Senators of Rome, and the title of our nobilitie to their *patricij*: when *patricij* did be-token *Senatores aut senatorum filios*. *Census Senatorius* was in Rome, at diverse times diverse, and in Englande no man is created barron, excepte he may dispend of yearly revenue, one thousand poundes or one thousand markes at the least. Vicountes, earles, marquises and dukes more according to the proportion of the degree and honour, but though by chaunce he or his sonne have lesse, he keepeth his degree: but if they decay by excesse, and be not able to maintaine the honour (as *senatores Romani* were *amoti senatu*) so sometimes they are not admitted to the upper house in the parliament, although they keepe the name of Lorde still.

Of the second sort of gentlemen which may be called *Nobilitas minor*, and first of knightes.

CHAP. 18.

NO man is a Knight by succession, not the king or prince. And the name of prince in england *κατ' ἐξοχήν* betokeneth the kinges eldest sonne or

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prince of wales: although the king himselfe, his eldest sonne, and all dukes be called by generall name princes. But as in Fraunce the kinges eldest sonne hath the title of the daulphine, and he or the next heire apparant to the crowne is monsire, so in Englande the kinges eldest sonne is called *κατ' ἐξοχήν* the prince. Knightes therefore be not borne but made, either before the battle to encourage them the more to adventure their lives, or after the conflict, as advancement for their hardinesse and manhood already shewed: or out of the warre for some great service done, or some good hope through the vertues which do appeare in them. And they are made either by the king himselfe, or by his commission and royall authoritie, given for the same purpose, or by his liuetenant in the warres, who hath his royall and absolute power committed to him for that time. And that order seemeth to aunswere in part to that which the Romanes called *Equites Romanos*, differing in some pointes, and agreeing in other, as their common wealth and ours do differ and agree: for never in all pointes one common wealth doth agree with an other, no nor long time any one common wealth with it selfe. For al chaungeth continually to more or lesse, and still to diverse and diverse orders, as the diversity of times do present occasion, and the mutabilitie of mens wittes doth invent and assay newe wayes, to reforme and amende that wherein they do finde fault. *Equites Romani* were chosen *ex censu*, that is according to their substance and riches. So be knightes in England most commonly, according to the yearely renew of their landes being able to maintaine that estate: yet all they that had *Equestrem censum, non legebantur equites*. No

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more are all made knightes in Englande that may dispende a knightes land or fee, but they onely whom the king wil so honour. The number of *Equites* was uncertaine, and so it is of knightes, at the pleasure of the prince. *Equites Romani* had *equum publicum*. The knightes of England have not so, but finde their own horse themselves in peace time, and most usually in warres.

Census equester was among the Romanes at diverse times of diverse valew: but in England whosoever may dispende of his free landes 40. l. sterling of yearly renew by an olde law of Englande either at the coronation of the king, or mariage of his daughter, or at the dubbing of the prince, knight, or some such great occasion, may be by the king compelled to take that order and honour, or to pay a fine, which many not so desirous of honour as of riches, had rather disburse. Some who for causes ar not thought worthy of that honor and yet have abilitie, neither be made knightes though they would, and yet pay the fine. XI. l. sterling, at that time when this order began, maketh now Cxx. l. of currant mony of Englande: as I have more at large declared in my booke of the diversitie of standardes or the valor of monies.

When the Romanes did write *senatus populusque Romanus*, they seemed to make but two orders, that is of the Senate and of the people of Rome, and so in the name of people they contained *equites* and *plebem*: so when we in England do say the Lordes and the commons, the knights, esquires, and other gentlemen, with citzens, burgeses and yeomen be accompted to make the commons. In ordaining of

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lawes the senate of Lordes of England is one house, where the Archbishoppes and Bishops also be, and the king or Queene for the time being as chiefe: the Knights and all the rest of the gentlemen, citizens and burgeses which be admitted to consult upon the greatest affaires of the Realme be in an other house by themselves, and that is called the house of the commons, as we shal more clearly describe when we speake of the parliament. Whereupon this worde knight is derived, and whether it do betoken no more but that which *miles* doth in latine, which is a souldier, might be moved as a question. The word souldier now seemeth rather to come of sould and payment, and more to betoken a waged or hyred man to fight than otherwise, yet *Cæsar* in his Commentaries called *soldures* in the tongue gallois, men who devoted and swore themselves in a certaine band or othe one to another and to the captaine, which order if the Almaines did follow, it may be that they who were not hyred but being of the nation, upon their owne charges and for their advauncement, and by such common oth or band that did follow the warres, were (possibly) *κατ' ἐξοχήν* called knightes or *milites*, and nowe among the Almaines some are called lanceknights as souldiers of their band not hyred, although at this day they be for the most part hirelings. Or peradventure it may be that they which were next about the prince as his garde or servauntes picked or chosen men out of the rest being called in the Almaine language, *knighthen*, which is asmuch to say as servantes: these men being found of good service, the word afterward was taken for an honor, and for him who maketh profession of armes. Our language is

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so chaunged that I dare make no judgement therof. Now we call him knight in english that the french calleth *chevalier*, and the latine *equitem* or *equestris ordinis*.

And when any man is made a knight, he kneeling downe is stroken of the prince, with his sworde naked upon the backe or shoulder, the prince saying: *sus* or *sois chivalier au nom de Dieu* and (in times past) they added *S. George*, and at his arising the prince saith, *avauncer*. This is the manner of dubbing of knights at this present: and that terme dubbing was the olde terme in this point, and not creation. At the coronation of a king or queene, there be knightes of the bath made with long and more curious ceremonies: But howsoever one be dubbed or made a knight, his wife is by and by called a Ladie as well as a barons wife: he himselfe is not called *Lorde*, but hath to his name in common appellation added this syllable, *Sir*, as if he before were named, *Thomas*, *William*, *John*, or *Richard*, afterward he is alwayes called *Sir Thomas*, *Sir William*, *Sir John*, *Sir Richard*, and that is the title which men give to knightes in England. This may suffice at this time, to declare the order of knighthood, yet there is an other order of knightes in England which be called the knightes of the garter. King *Edward* the third, after he had obtained many notable victories, King *John* of Fraunce, King *James* of Scotland, being both prisoners in the tower of London at one time, and king *Henrie* of Castell the bastard expulsed out of his realme, and Don *Petro* restored unto it by the prince of Wales and Duke of Aquitaine called the blacke prince, invented a societie of honour, and made a choise out

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of his owne realme and dominions, and all Christendom: and the best and most excellent renowned persons in vertues and honour, he did adorne with that title to be knightes of his order, gave them a garter decked with golde, pearle and precious stones, with the buckle of gold, to weare daily on the left legge onely, a kirtle, gowne, cloke, chaperon, collar, and other august and magnificall apparell both of stuffe and fashion exquisite and heroicall, to weare at high feastes, as to so high and princely an order was meete: of which order he and his successors Kinges and Queenes of England to be the soveraigne, and the rest by certaine statutes and lawes among themselves, be taken as brethren and fellowes in that order, to the number of xxvi. But because this is rather an ornament of the realme than any policie or government therof, I leave to speake any further of it.

Of Esquiers.

CHAP. 19.

EScuier or esquier (which we call commonly squire) is a French worde, and betokeneth *Scutigerum* or *Armigerum*, and be all those which beare armes (as we call them) or armories (as they terme them in French) which to beare is a testimonie of the nobilitie or race from whence they do come. These be taken for no distinct order of the common wealth, but do goe with the residue of the gentlemen: save that (as I take it) they be those who beare armes, testimonies (as I have saide) of their race, and therefore have neither creation nor dubbing: or else they were

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at the first costerels or the bearers of the armes of Lordes or knightes, and by that had their name for a dignitie and honour given to distinguish them from a common souldier called in latine *Gregarius miles*.

Sir Thomas
Smith De republica anglorum
Of Gentlemen.

CHAP. 20.

Gentlemen be those whom their blood and race doth make noble and knowne, *Ευγενεῖς* in Greeke, the Latines call them all *Nobiles*, as the French *Nobles*, *Ευγενεῖα* or *Nobilitas* in Latine is defined, honour or title given, for that the auncestor hath bin notable in riches or vertues, or (in fewer wordes) old riches or prowes remaining in one stock. Which if the successors do keepe and followe, they be *verè nobiles* and *Ευγενεῖς*: if they doe not, yet the fame and wealth of their auncestors serve to cover them so long as it can, as a thing once gilted though it be copper within, till the gilt be worne away. This hath his reason, for the Etimologic of the name serveth thefficacie of the worde. *Gens* in Latine betokeneth the race and sirname, so the Romaines had *Cornelios*, *Sergios*, *Appios*, *Fabios*, *Aemilios*, *Pisones*, *Julios*, *Brutos*, *Valerios*, of which who were *Agnati*, and therefore kept the name, were also *Gentiles*: and remaining the memorie of the glorie of their progenitors fame, were gentlemen of that or that race. This matter made a great strife among the Romanes, when those which were *Novi homines* were more allowed, for their vertues new and newly shoven, than the olde smell of auintient race newly defaced by the cowardise and evill

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life of their nephewes and discendauntes could make the other to be. Thus the *Cicerones*, *Catones*, and *Marii* had much adoe with those auncients, and therefore said *Juvenalis*:

*Malo pater tibi sit Tersites, dummodo tu sis
Aeacidi similis vulcaniaque arma capessas,
Quàm te Thersiti similem producat Achilles.*

But as other common wealthes were faine to doe, so must all princes necessarilie followe, that is, where vertue is to honour it: and although vertue of auncient race be easier to be obtained, aswell by the example of the progenitors, which encourageth, as also through habilitie of education and bringing up, which enableth, and the lastly enraced love of tenants and neyborns to such noblemen and gentlemen, of whom they holde and by whom they doe dwell, which pricketh forward to ensue in their fathers steps. So if all this doe faile (as it were great pitie it should) yet such is the nature of all humaine thinges, and so the world is subject to mutabilitie, that it doth many times faile: but when it doth, the prince and common wealth have the same power that their predecessors had, and as the husbandman hath to plant a new tree where the olde fayleth, so hath the prince to honour vertue where he doth find it; to make gentlemen, esquiers, knights, barons, earles, marquises, and dukes, where he seeth vertue able to beare that honour or merits, and deserves it, and so it hath alwayes bin used among us. But ordinarily the king doth only make knights and create barons or higher degrees: for as for gentlemen, they be made good cheape in England. For whosoever studieth the lawes of the realme, who studieth in the universities, who professeth liberall sciences, and to be

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shorte, who can live idly and without manuell labour, and will beare the port, charge and countenance of a gentleman, he shall be called master, for that is the title which men give to esquires and other gentlemen, and shall be taken for a gentleman: for true it is with us as is saide, *Tanti eris alijs quanti tibi feceris*: (and if neede be) a king of Heralds shal also give him for mony, armes newly made and invented, the title whereof shall pretende to have beene found by the sayd Herauld in perusing and viewing of olde registers, where his auncestors in times past had bin recorded to beare the same: Or if he wil do it more truely and of better faith, he will write that for the merittes of that man, and certaine qualities which he doth see in him, and for sundrie noble actes which he hath perfourmed, he by the authoritie which he hath as king of Heraldes and armes, giveth to him and his heires these and these armes, which being done I thinke he may be called a squire, for he beareth ever after those armes. Such men are called sometime in scorne gentlemen of the first head.

Whether the maner of England in making gentlemen so easily is to be allowed.

CHAP. 21.

A Man may make doubt and question whether this maner of making gentlemen is to be allowed or no, and for my part I am of that opinion that it is not amisse. For first the prince loseth nothing by it, as he shoulde doe if it were as in Fraunce: for the yeomen or husbandman is no more subject to taile or

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taxe in Englande than the gentleman: no, in every payment to the king the gentleman is more charged, which he beareth the gladlier and dareth not gaine saie for to save and keepe his honour and reputation. In any shew or muster or other particular charge of the towne where he is, he must open his purse wider and augment his portion above others, or else he doth diminish his reputation. As for their outward shew, a gentleman (if he wil be so accompted) must go like a gentleman, a yeoman like a yeoman, and a rascall like a rascall: and if he be called to the warres, he must and will (whatsoever it cost him) array himselfe and arme him according to the vocation which he pretendeth: he must shew also a more manly corage and tokens of better education, higher stomacke and bountifuller liberalitie than others, and keepe about him idle servauntes, who shall doe nothing but waite upon him. So that no man hath hurt by it but he himselfe, who hereby per chance will beare a bigger saile than he is able to maintaine. For as touching the policie and goverment of the common wealth, it is not those that have to do with it, which will magnifie them selves, and goe in higher buskins than their estate will beare: but they which are to be appointed, are persons tryed and well knowen, as shall be declared hereafter.

Sumptuous

Of Citizens and Burgesses.

CHAP. 22.

NExt to gentlemen, be appointed citizens and burgesses, such as not onely be free and received as officers within the cities, but also be of some

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substance to beare the charges. But these citizens and burgesses, be to serve the common wealth, in their cities and burrowes, or in corporate townes where they dwell. Generally in the shyres they be of none accompt, save onely in the common assembly of the realme to make lawes, which is called the Parliament. The aunciet cities appoint iiij. and ech burrough ij. to have voices in it, and to give their consent or dissent in the name of the citie or burrough for which they be appointed.

Of Yeomen.

CHAP. 23.

Those whom we call yeomen next unto the nobilitie, knights and squires, have the greatest charge and doings in the common wealth, or rather are more travailed to serve in it than all the rest: as shall appeare hereafter. I call him a yeoman whom our lawes doe call *Legalem hominem*, a worde familiar in writtes and enquestes, which is a freeman borne English, and may dispend of his owne free lande in yerely revenue to the summe of xl. s. sterling: This maketh (if the just value were taken now to the proportion of monies) vi. l. of our currant mony at this present. This sort of people confesse themselves to be no gentlemen, but give the honour to al which be or take upon them to be gentlemen, and yet they have a certaine preheminance and more estimation than laborers and artificers, and commonly live welthilie, keepe good houses, and do their businesse, and travaile to acquire riches: these be (for the most part) fermors unto gentlemen, which with grasing, frequenting of

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markettes, and keeping servauntes not idle as the gentleman doth, but such as get both their owne living and parte of their maisters: by these meanes doe come to such wealth, that they are able and daily doe buy the landes of unthriftie gentlemen, and after setting their sonnes to the schoole at the Universities, to the lawe of the Realme, or otherwise leaving them sufficient landes whereon they may live without labour, doe make their saide sonnes by those meanes gentlemen. These be not called masters, for that (as I saide) pertaineth to gentlemen onely: But to their surnames, men adde goodman: as if the surname be *Luter*, *Finch*, *White*, *Browne*, they are called, goodman *Luter*, goodman *White*, goodman *Finch*, goodman *Browne*, amongst their neighbours, I meane not in matters of importance or in lawe. But in matters of lawe and for distinction, if one were a knight they would write him (for example sake) sir *John Finch* knight, so if he be an esquier, *John Finch* esquier or gentleman, if he be no gentleman, *John Finch* yeoman. For amongst the gentlemen they which claime no higher degree, and yet be to be exempted out of the number of the lowest sort thereof, be written esquiers. So amongst the husbandmen labourers, lowest and rascall sort of the people such as be exempted out of the number of the rascabilitie of the popular be called and written yeomen, as in the degree next unto gentlemen. These are they which olde Cato calleth *Aratores* and *optimos cives in Republica*: and such as of whom the writers of common wealthes praise to have manie in it. *Aristoteles* namely reciteth *πόμα μεσήτια ἄριστα*: these tende their owne businesse, come not to meddle in publike matters and judgements but when they are

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called, and gladde when they are delivered thereof, are obedient to the gentlemen and rulers, and in warre can abide travaile and labour as men used to it, yet wishing it soone at an ende that they might come home and live of their owne. When they are foorth they fight for their Lordes of whom they hold their landes, for their wives and children, for their countrey and nation, for praise and honour, against they come home, and to have the love of their Lorde and his children to be continued towards them and their children, which have adventured their lives to and with him and his. These are they which in the old world gat that honour to Englande, not that either for witte, conduction, or for power they are or were ever to be compared to the gentlemen, but because they be so manie in number, so obedient at the Lordes call, so strong of bodie, so heard to endure paine, so couragious to adventure with their Lorde or Captaine going with, or before them, for else they be not hastie nor never were, as making no profession of knowledge of warre. These were the good archers in times past, and the stable troupe of footemen that affaide all France, that would rather die all, than once abandon the knight or gentleman their Captaine, who at those daies commonly was their Lorde, and whose tenautes they were, readie (besides perpetuall shame) to be in danger of undoing of them selves, and all theirs if they should shoue any signe of cowardise or abandon the Lorde, Knight or Gentlemen of whom they helde their living. And this they have amongst them from their forefathers tolde one to an other. The gentlemen of France and the yeomen of Englande are renowned, because in battle of horsemen Fraunce was many times

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too good for us, as we againe alway for them on foote. And Gentlemen for the most part be men at armes and horsemen, and yeomen commonlie on foote: howsoever it was, yet the gentlemen had alwaies the conduction of the yeomen, and as their captaines were either a foote or upon a litle nagge with them, and the Kinges of Englande in foughten battles remaining alwaies among the footemen, as the French Kinges amongst their horsemen. Each Prince therby, as a man may gesse, did shew where he thought his strength did consist. What a yeoman is I have declared, but from whence the word is derived it is hard to say: it cannot be thought that yeomen should be said a young man, for commonly wee doe not call any a yeoman till he be married, and have children, and as it were have some authoritie among his neighbours. Yonker in lowe dutch betokeneth a meane gentleman or a gay fellowe. Possible our yeomen not being so bolde as to name themselves gentlemen, when they came home, were content when they had heard by frequentation with lowe dutchmen of some small gentleman (but yet that would be counted so) to be called amongst them, yonker man, the calling so in warres by mockage or in sport thone an other, when they come home, yonker man, and so yeoman: which worde now signifieth among us, a man well at ease and having honestlie to live, and yet not a gentleman: whatsoever that worde yonker man, yonke man, or yeoman doth more or lesse signifie to the dutch men.

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Of the fourth sort of men which
doe not rule.

CHAP. 24.

THe fourth sort or classe amongst us, is of those which the olde Romans called *capite censij proletarij* or *operæ*, day labourers, poore husbandmen, yea marchantes or retailers which have no free lande, copiholders, and all artificers, as Taylers, Shoomakers, Carpenters, Brickemakers, Bricklayers, Masons, &c. These have no voice nor authoritie in our common wealth, and no account is made of them but onelie to be ruled, not to rule other, and yet they be not altogether neglected. For in cities and corporate townes for default of yeomen, enquests and Juries are impaneled of such manner of people. And in villages they be commonly made Churchwardens, alecunners, and manie times Constables, which office toucheth more the common wealth, and at the first was not employed uppon such lowe and base persons. Wherefore generally to speake of the common wealth, or policie of Englande, it is governed, administred, and manured by three sortes of persons, the Prince, Monarch, and head governer, which is called the king, or if the crowne fall to a woman, the Queene absolute, as I have heeretofore saide: In whose name and by whose authoritie all things are administred. The gentlemen, which be divided into two partes, the Baronie or estate of Lordes conteyning barons and all that bee above the degree of a baron, (as I have declared before): and those which be no Lords, as

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Knights, Esquires, and simply gentlemen. The thirde and last sort of persons is named the yeomanrie: each of these hath his part and administration in judgements, corrections of defaultes, in election of offices, in appointing and collection of tributes and subsidies, or in making lawes, as shall appear heereafter.

THE SECOND booke.

Of the Parliament and the au-
thoritie thereof.

CHAP. I.

THE most high and absolute power of the realme of Englande, consisteth in the Parliament. For as in warre where the king himselfe in person, the nobilitie, the rest of the gentilitie, and the yeomanrie are, is the force and power of Englande: so in peace and consultation where the Prince is to give life, and the last and highest commaundement, the Baronie for the nobilitie and higher, the knightes, esquiers, gentlemen and commons for the lower part of the common wealth, the bishoppes for the clergie bee present to advertise, consult and shew what is good and necessarie for the common wealth, and to consult together, and upon mature deliberation everie bill or lawe being thrise reade and disputed uppon in either house, the other two partes first each a part, and after the Prince himselfe in presence of both the parties doeth consent unto and alloweth. That is the Princes and whole realmes deede: whereupon justlie no man can complaine, but must accommodate himselfe to finde it good and obey it.

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That which is doone by this consent is called firme, stable, and *sanctum*, and is taken for lawe. The Parliament abrogateth olde lawes, maketh newe, giveth orders for thinges past, and for thinges hereafter to be followed, changeth rightes, and possessions of private men, legittimateth bastards, establisheth formes of religion, altereth weightes and measures, giveth formes of succession to the crowne, defineth of doubtfull rightes, whereof is no lawe alreadie made, appointeth subsidies, tailes, taxes, and impositions, giveth most free pardons and absolutions, restoreth in bloud and name as the highest court, condemneth or absolveth them whom the Prince will put to that triall: And to be short, all that ever the people of Rome might do either in *Centuriatis comitijs* or *tributis*, the same may be doone by the parliament of Englande, which representeth and hath the power of the whole realme both the head and the bodie. For everie Englishman is entended to bee there present, either in person or by procuracion and attornies, of what preheminance, state, dignitie, or qualitie soever he be, from the Prince (be he King or Queene) to the lowest person of Englande. And the consent of the Parliament is taken to be everie mans consent.

The forme of holding the Parliament.

CHAP. 2.

THE Prince sendeth foorth his rescripts or writtes to every duke, marques, baron, and every other Lorde temporall or spirituall who hath voice in the parliament, to be at his great counsell of Parliament such a day, (the space from the date of the writ is

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commonly at the least fortie dayes): he sendeth also writtes to the Sherifes of every shyre to admonish the whole shire to choose two knightes of the parliament in the name of the shyre, to heare and reason, and to give their advise and consent in the name of the shire, and to be present at that day: likewise to every citie and towne which of ancientie hath bin wont to finde burgesses of the parliament, so to make election that they might be present there at the first day of the parliament. The knightes of the shyre be chosen by all the gentlemen and yeomen of the shyre, present at the day assigned for the election: the voice of any absent can be counted for none. Yeomen I call here (as before) that may dispense at the least xl. s. of yearly rent of free lande of his owne. These meeting at one day, the two who have the more of their voices be chosen knightes of the shire for that parliament: likewise by the pluralitie of the voyces of the citizens and burgesses be the burgesses elected. The first day of the parliament the Prince and all the Lordes in their robes of parliament do meete in the higher house, where after prayers made, they that be present are written, and they that be absent upon sicknes or some other reasonable cause (which the prince will allowe) do constitute under their hande and seale some one of those who be present as their procurer or attorney to give voice for them, so that by presence or attorney and proxey they be all there, all the princes and barrons and all archbishops and bishops, and (when abbots were) so many abbots as had voice in parliament. The place where the assembly is, is richly tapessed and hanged, a princely and royal throne as appertaineth to a king, set in the midst

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of the higher place thereof. Next under the prince sitteth the Chancellor, who is the voyce and orator of the prince. On the one side of that house or chamber sitteth the archbishops and bishops, ech in his ranke, on the other side the dukes and barons. In the middest thereof upon woollstackes sitteth the Judges of the realme, the master of the roules, and the secretaries of estate. But these that sit on the woollstacks have no voice in the house, but onely sit there to aunswere their knowledge in the law, when they be asked if any doubt arise among the Lordes. The secretaries to aunswere of such letters or things passed in counsell whereof they have the custodie and knowledge: and this is called the upper house, whose consent and dissent is given by ech man severally and by himselfe, first for himselfe, and then severally for so many as he hath letters and proxies, when it commeth to the question, saying onely content or not content, without further reasoning or replying. In this meane time the knights of the shires and burgesses of the parliament (for so they are called that have voice in parliament, and are chosen as I have said before, to the number betwixt iij. C. and iiij. C.) are called by such as it pleaseth the prince to appoint, into an other great house or chamber by name, to which they aunswere and declaring for what shyre or towne they aunswere: then they are willed to choose an able and discrete man to be as it were the mouth of them all, and to speake for and in the name of them, and to present him so chosen by them to the prince: which done they comming al with him to a barre, which is at the nether ende of the upper house, there he first praiseth the prince, then maketh his excuse of unabilitie,

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and prayeth the prince that he would command the commons to choose another. The chancellor in the princes name doth so much declare him able, as he did declare himselfe unable, and thanketh the commons for choosing so wise, discrete and eloquent a man, and willetth them to go and consult of lawes for the common wealth. Then the speaker maketh certaine requests to the prince in the name of the commons, first that his majestie would be content that they may use and enjoy all their liberties and priviledges that the common house was wont to enjoy. Secondly that they might franckely and freely saye their mindes in disputing of such matters as may come in question, and that without offence to his Majestie. Thirdly that if any should chaunce of that lower house to offend or not to do or say as should become him, or if any should offend any of them being called to that his highnes court: That they themselves might (according to the ancient custome) have the punishment of them. And fourthly, that if there came any doubt, whereupon they shal desire to have thadvise or conference with his Majestie or with any of the Lordes, that they might doe it: All which he promiseth in the commons names that they shall not abuse, but have such regarde as most faithfull, true and loving subjectes ought to have to their prince.

> The Chauncelor answereth in the princes name, as apperteyneth. And this is all that is doone for one day, and sometime two. Besides the Chauncelor, there is one in the upper house who is called Clarke of the Parliament, who readeth the bills. For all that commeth in consultation either in the upper house or in the neather house, is put in writing first in

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paper, which being once read, he that will, riseth up and speaketh with it or against it: and so one after another so long as they shall thinke good. That doone they goe to another, and so an other bill. After it hath bin once or twice read, and doth appeare that it is somewhat liked as reasonable, with such amendment in wordes and peradventure some sentences as by disputation seemeth to be amended: In the upper house the Chauncelor asketh if they will have it engrossed, that is to say put into parchment: which doone, and read the third time, and that eftsoones if any be disposed to object disputed againe among them, the Chauncelor asketh if they will goe to the question: and if they agree to goe to the question, then he sayth, here is such a lawe or act concerning such a matter, which hath beene thrise read here in this house, are ye content that it be enacted or no? If the not contentes be moe, then the bill is dashed, that is to say the lawe is annihilated and goeth no further. If the contentes be the more, then the Clarke writeth underneath: *Soit baille aux commons.* And so when they see time they send such bills as they have approved by two or three of those which doe sit on the woosacks to the commons: who asking licence, and comming into the house, with due reverence, sayth to the speaker: Master speaker, my Lordes of the upper house have passed among them and thinke good, that there should be enacted by Parliament such an act, and such an act, and so readeth the titles of that act or actes. They pray you to consider of them, and shew them your advise, which doone they goe their way. They being gone and the doore againe shut, the speaker rehearseth to the house what they sayde.

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And if they be not busie disputing at that time in an other bill, he asketh them streightwaie if they will have that bill or (if there be mo) one of them.

In like maner in the lower house the speaker sitting in a seate or chaire for that purpose somewhat higher, that he may see and be seene of them all, hath before him in a lower seate his Clarke, who readeth such bills as be first propounded in the lower house, or be sent down from the Lords. For in that point ech house hath equal authoritie, to propounde what they thinke meete, either for thabrogating of some law made before, or for making of a newe. All bills be thrise in three diverse dayes read and disputed upon, before they come to the question. In the disputing is a marvelous good order used in the lower house. He that standeth uppe bareheaded is understood that he will speake to the bill. If moe stande uppe, who that first is judged to arise, is first harde, though the one doe prayse the law, the other diswade it, yet there is no altercation. For everie man speaketh as to the speaker, not as one to an other, for that is against the order of the house. It is also taken against the order, to name him whom ye doe confute, but by circumlocution, as he that speaketh with the bill, or he that spake against the bill, and gave this and this reason. And so with perpetuall Oration not with altercation, he goeth through till he do make an end. He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would change his opinion. So that to one bill in one day one may not in that house speake twice, for else one or two with altercation woulde spende all the time. The next day he may, but then also but once.

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✓ No reviling or nipping wordes must be used. For then all the house will crie, it is against the order: and if any speake unreverently or seditiouslie against the Prince or the privie counsell, I have seene them not onely interrupted, but it hath beene moved after to the house, and they have sent them to the tower. So that in such a multitude, and in such diversitie of mindes, and opinions, there is the greatest modestie ✓ and temperance of speech that can be used. Neverthelesse with much doulce and gentle termes, they make their reasons as violent and as vehement the one against the other as they may ordinarily, except it bee for urgent causes and hasting of time. At the afternoone they keepe no parliament. The speaker hath no voice in the house, nor they will not suffer him to speake in any bill to moove or diswade it. But when any bill is read, the speakers office is as briefie and as plainely as he may to declare the effect thereof to the house. If the commons doe assent to such billes as be sent to them first agreed upon from the Lords thus subscribed, *Les commons ont assentus*, so if the Lordes doe agree to such billes as be first agreed upon by the Commons, they sende them downe to the speaker thus subscribed, *Les Seigneurs ont assentus*. If they cannot agree, the two houses (for everie bill from whence soever it doth come is thrise reade in each of the houses) if it be understoode that there is any sticking, sometimes the Lordes to the Commons, somtime the Commons to the Lords doe require that a certaine of each house may meete together, and so ech part to be enformed of others meaning, and this is alwaies graunted. After which meeting for the most part not alwaies either parte agrees to others billes.

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In the upper house they give their assent and dissent each man severally and by himselfe first for himselfe, and then for so manie as he hath proxie. When the Chaunceler hath demanded of them whether they will goe to the question after the bill hath beene thrise reade, they saying only content or not content, without further reasoning or replying: and as the more number doeth agree, so is it agreed on, or dashed.

In the neather house none of them that is elected either Knight or Burges can give his voice to an other nor his consent nor dissent by proxie. The more parte of them that be present onely maketh the consent or dissent. After the bill hath beene twice reade, and then engrossed and eftsoones reade and disputed on ynough as is thought: the speaker asketh if they will goe to the question. And if they agree he holdeth the bill up in his hande and sayeth, as many as will have this bill goe forwarde, which is concerning such a matter, say yea. Then they which allowe the bill crie yea, and as many as will not, say no: as the crie of yea or no is bigger, so the bill is allowed or dashed. If it be a doubt which crie is the bigger, they divide the house, the speaker saying, as many as doe allowe the bill goe downe with the bill, and as many as do not sitte still. So they divide themselves, and being so divided they are numbred who make the more part, and so the bill doeth speede. It chaunceth sometime that some part of the bil is allowed, some other part hath much contrariety and doubt made of it: and it is thought if it were amended it would goe forwarde. Then they chuse certaine *committees* of them who have spoken with the bil and

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against it to amende it, and bring it in againe so amended, as they amongst them shall thinke meete: and this is before it is engrossed, yea and some time after. But the agreement of these *committees* is no prejudice to the house. For at the last question they will either accept it or dash it as it shall seeme good, notwithstanding that whatsoever the *committees* have doone.

Thus no bill is an act of Parliament, ordinance, or edict of law, untill both the houses severallie have agreed unto it, after the order aforesaide, no nor then neither. But the last day of that Parliament or session the Prince commeth in person in his Parliament robes, and sitteth in his state: all the upper house sitteth about the Prince in their states and order in their robes. The speaker with all the common house cometh to the barre, and there after thanks given first in the Lordes name by the Chaunceller &c. and in the commons name by the speaker to the Prince, for that hee hath so great care of the good governement of his people, and for calling them together to advise of such thinges as should be for the reformation, establishing and ornament of the common wealth: the Chaunceller in the Princes name giveth thanks to the Lords and commons for their paines and travailes taken, which he saith the Prince will remember and recompence when time and occasion shall serve, and that he for his part is ready to declare his pleasure concerning their proceedings, whereby the same may have perfect life and accomplishment by his princelie authoritie, and so have the whole consent of the Realme. Then one reades the title of everie act which hath passed at that session, but only in this fashion:

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An act concerning such a thing &c. It is marked there what the Prince doth allowe, and to such he sayth: *Le roy or la royne le veult.* And those be taken nowe as perfect lawes and ordinances of the Realme of Englande and none other, and as shortlie as may be put in print, except it be some private cause or lawe made for the benefit or prejudice of some private man, which the Romans were wont to call *privilegia.* These be onelie exemplified under the seale of the Parliament, and for the most part not printed. To those which the Prince liketh not, he answereth, *Le roy or la royne saduisera,* and those be accounted utterly dashed and of no effect.

This is the order and forme of the highest and most authentick court of Englande, by vertue whereof all those things be established whereof I spake before, and no other meanes accounted vailable to make any new forfeiture of life, member, or landes of any English man, where there was no lawe ordayned for it before. Nowe let us speake of the saide partes when they be severall.

Of the Monarch King or Queene of Englande.

CHAP. 3.

↓ THE Prince whom I nowe call (as I have often before) the Monarch of Englande, King or Queene, hath absolutelie in his power the authoritie of warre and peace, to defie what Prince it shall please him, and to bid him warre, and againe to reconcile

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himselfe and enter into league or truce with him at his pleasure or the advice onely of his privie counsell. His privie counsell be chosen also at the Princes pleasure out of the nobilitie or baronie, and of the Knightes, and Esquiers, such and so many as he shal thinke good, who doth consult daily, or when neede is of the weightie matters of the Realme, to give therein to their Prince the best advice they can. The Prince doth participate to them all, or so many of them, as he shall thinke good, such legations and messages as come from forren Princes, such letters or occurrentes as be sent to himselfe or to his secretaries, and keepeth so many ambassades and letters sent unto him secret as he will, although these have a particular oth of a counseller touching faith and secrets administred unto them when they be first admitted into that companie. So that heerein the kingdome of Englande is farre more absolute than either the duke-dome of Venice is, or the kingdome of the Lacedemonians was. In warre time, and in the field the Prince hath also absolute power, so that his worde is a law, he may put to death, or to other bodilie punishment, whom he shall thinke so to deserve, without processe of lawe or forme of judgement. This hath beene sometime used within the Realme before any open warre in sodden insurrections and rebellions, but that not allowed of wise and grave men, who in that their judgement had consideration of the consequence and example, asmuch as of the present necessitie, especially, when by anie meanes the punishment might have beene doone by order of lawe. This absolute power is called marciall lawe, and ever was and necessarilie must be used in all campos and hostes

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of men, where the time nor place do suffer the tariance of pleading and processe, be it never so short, and the important necessitie requireth speedie execution, that with more awe the souldier might be kept in more straight obedience, without which never captaine can doe anie thing vaileable in the warres.

The prince useth also absolute power in crying and decreeing the mony of the realme by his proclamation onely. The mony is alwayes stamped with the princes image and title. The forme, fashion, maner, weight, finenesse, and basenesse therof, is at the discretion of the prince. For whom should the people trust more in that matter than their prince, seeing the coine is only to certifie the goodnes of the mettall and the weight, which is affirmed by the princes image and marke? But if the prince will deceave them and give them copper for silver or golde, or enhaunce his coyne more than it is worth, he is deceived himselfe, aswell as he doth goe about to deceave his subjectes. For in the same sort they pay the prince his rentes and customes. And in time they will make him pay rateably or more for meate, drinke and victualles for him and his, and for their labour: which experience doth teach us nowe in our dayes to be doone in all regions. For there ever hath beene, and ever wil be a certaine proportion betweene the scarcity and plentie of other thinges, with gold and silver, as I have declared more at large in my booke of monie. For all other measures and weightes, aswell of drie thinges as of wet, they have accustomed to be established or altered by the Parliament, and not by *the princes proclamation only.*

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N
 The prince useth also to dispence with lawes made, whereas equitie requireth a moderation to be had, and with paynes for transgression of lawes, where the payne of the lawe is applyed onely to the prince. But where the forfaitie (as in popular actions it chaunceth many times) is part to the prince, the other part to the declarator, detector or informer, there the prince doth dispence for his owne part onely. Where the criminall action is intended by inquisition (that maner is called with us at the princes suite) the prince giveth absolution or pardon: yet with a clause, *modo stet rectus in curia*, that is to say, that no man object against the offender. Whereby notwithstanding that he hath the princes pardon if the person offended will take upon him the accusation (which in our language is called the appeale) in cases where it lieth, the princes pardon doth not serve the offender.

N
 The prince giveth all the chiefe and highest offices or magistracies of the realme, be it of judgement or dignitie, temporall or spirituall, and hath the tenthes and first fruites of all Ecclesiasticall promotions, except in the Universities and certaine Colledges which be exempt.

N
 All writtes, executions and commaundementes be done in the princes name. We doe say in England the life and member of the kinges subjectes are the kinges onely, that is to say no man hath *hault* nor *moyenne* justice but the king, nor can hold plea thereof. And therefore all those pleas, which touche the life or the mutilation of man, be called pleas of the crowne, nor can be doone in the name of any inferior person than he or shee that holdeth the crowne of Englande. And likewise no man can give pardon

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thereof but the prince onely: Although in times past there were certaine countie Palatines, as Chester, Durham, Elie, which were *hault* justicers, and writtes went in their name, and also some Lorde marchers of Wales, which claymed like priviledge. All these are nowe worne away. The supreme justice is done in the kinges name, and by his authoritie onely.

¶ The Prince hath the wardshippe and first mariage of all those that hold landes of him in chiefe. And also the government of all fooles naturall, or such as be made by adventure of sicknes, and so continue, if they be landed. This being once graunted by act of Parliament (although some inconvenience hath beene thought to grow thereof, and sith that time it hath beene thought verie unreasonable) yet once annexed to the crowne who ought to go about to take the clubbe out of *Hercules* hand. And being governed justly and rightly, I see not so much inconvenience in it, as some men would make of it: diverse other rights and preeminences the prince hath which be called prerogatives royalles, or the prerogative of the king, which be declared particularly in the bookes of the common lawes of England.

¶ To be short the prince is the life, the head, and the authoritie of all thinges that be doone in the realme of England. And to no prince is doone more honor and reverence than to the King and Queene of Englande, no man speaketh to the prince nor serveth at the table but in adoration and kneeling, all persons of the realme be bareheaded before him: insomuch that in the chamber of presence where the cloath of estate is set, no man dare walke, yea though the prince be not there, no man dare tarrie

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there but bareheaded. This is understood of the subjectes of the realme: For all strangers be suffered there and in all places to use the maner of their countrie, such is the civilitie of our nation.

The chiefe pointes wherein one common wealth doth differ from an other.

CHAP. 4.

NOW that we have spoken of the parliament (which is the whole universall and generall consent and authoritie aswell of the prince as of the nobilitie and commons, that is to say, of the whole head and bodie of the realme of England) and also of the prince, (which is the head, life and governor of this common wealth): there remaineth to shewe, how this head doth distribute his authoritie and power to the rest of the members for the government of his realme, and the common wealth of the politique bodie of England. And whereas all common wealthes and governmentes be most occupied, and be most diverse in the fashion of five thinges: in making of lawes and ordinaunces, for their owne government: in making of battell and peace, or truce with forraine nations: in providing of mony for the maintenance of themselves, within themselves, and defence of themselves against their enemies: in choosing and election of the chiefe officers and magistrates: and fiftly in the administration of justice. The first and third we have shewed is doone by the prince in parliament. The seconde and fourth by the prince himselfe. The fift remaineth to be declared.

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Of the three maners and formes of trialles
or judgements in England.

CHAP. 5.

BY order and usage of Englande there is three wayes and maners, whereby absolute and definite judgement is given, by parliament which is the highest and most absolute, by battle and by the great assise.

Triall or judgement by parliament.

CHAP. 6.

THe matter of giving judgement by parliament betweene private and private man, or betweene the prince and any private man, be it in matters criminall or civill, for land or for heritage doth not differ from thorder which I have prescribed, but it proceedeth by bill thrise read in ech house and assented to as I have saide before, and at the last day confirmed and allowed by the prince. Howbeit such bills be seeldome receaved, because that great counsell being enough occupied with the publique affaires of the realme, will not gladly intermedle it selfe with private quarels and questions.

Triall of judgement by battle.

CHAP. 7.

THis is at this present not much used, partly because of long time the Pope and the cleargie to whom in times past we were much subject, always

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cryed against it as a thing damnable and unlawful, and partly because in all common wealthes (as to the tongue) so to the maners, fashions, habits, yea and kindes of trials and judgmentes, and to all other things that is therein used, time and space of yeares bringeth a change. But I could not yet learne that it was ever abrogated. So that it remaineth in force, whensoever it be demanded. The maner of it is described in *Briton*.

The triall by assise or xij. men, & first of the three partes which be necessary in judgement.

CHAP. 8.

THE two first judgementes be absolute supreme and without appeale, and so is also the judgement by the great assise. And because our manner of judgementes in England is in many things different from the fashion used either in Fraunce, or in Italie, or in any other place where the Emperors lawes and constitutions (called the civill lawes) be put in use, it will be necessarie here to make a litle digression, to the intent, that that which shalbe said hereafter may be better understood. All pursuites and actions (we call them in our English tongue pleas) and in barbarous (but now usuall) latine *placita*, taking that name *abusivè* of the definitive sentence, which may well be called *placitum* or *ἀρέστον*. The French useth the same calling in their language, the sentence of their judges *areste* or *arest*: in which wordes notwithstanding after their custome they do not sounde the *s*, but we call *placitum* the action not the sentence, and

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placitare barbarouslie, or to pleade in englishe, *agere* or *litigare*. Now in all judgements necessarily being two parties, the first we call the impleader, suiter, demaunder or demaundaunt and plaintiffe: In criminall causes if he professe to be an accuser, we call him appellat or appellour, and so accusation we call appeale. The other we call the defendat and in criminall causes prisoner, for he cannot aunswere in causes criminall before he do render himselfe or be rendred prisoner.

Judex is of us called Judge, but our fashion is so diverse that they which give the deadly stroke, and either condemne or acquite the man for guiltie or not guiltie, are not called Judges but the xij. men. And the same order aswell is in civill matters and pecuniarie, as in matters criminall.

Of pleas or actions.

CHAP. 9.

PLEAS or actions criminall be in English called pleas of the crowne, which be all those which tende to take away a mans life or any member of him, for his evill deserving against the prince and common wealth.

And this name is given not without a cause. For taking this for a principle that the life and member of an Englishman is in the power onely of the prince and his lawes, when any of his subjectes is spoyled either of life or member, the prince is endammaged thereby, and hath good cause to aske accompt, how his subjectes should come to that mischief. And againe for so much as the prince who governeth the

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scepter, and holdeth the crowne of Englande hath this in his care and charge, to see the realme well governed, the life, members and possessions of his subjectes kept in peace and assuraunce: he that by violence shall attempt to breake that peace and assuraunce, hath forfeited against the scepter and crowne of England: and therfore not without a cause in all inquisitions and inditementes, if any be found by the xij. men to have offended in that behalfe, streight the prince is saide to be partie, and he that shall speake for the prisoner shall be rebuked, as speaking against the prince. Neverthelesse it is never defended, but the prisoner and partie defendant in any cause may alleadge for him, al the reasons, meanes and defences that he can, and shall be peaceable hearde and quietlie: But in those pleas and pursuites of the crowne, procurer or advocate he gettes none, which in civill and pecuniarie matters (be it for land, rent, right, or possession, although he plead against the prince himselfe) is never denied.

Pleas civill be either personall or reall, personall as contractes or for injuries: reall be either possessorie to aske, or to keepe the possession, or in *rem*, which we cal a writte of right. For that which in the civill lawe is called *actio* or *formula*, we call a writ in English: so the Greekes called it worde for word *γραφη*, and in our barbarous latine we name it *breve*.

And as the olde Romanes had their actions some *ex jure civili*, and some *ex jure prætorio*, and ordinarily *prætor dabat actiones & formulas actionum*: so in Englande we retaine still this, and have some writtes out of the chauncerie, other out of the common place or the kings bench.

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Of the chiefe Tribunals, benches or courtes of Englande.

CHAP. 10.

IN times past (as may appeare to him that shall with judgement reade the histories and antiquities of England) the courtes and benches followed the king and his court wheresoever he went, especially shortly after the conquest. Which thing being found very cumbersome, painefull and chargeable to the people, it was agreed by parliament, that there shoulde be a standing place where judgement should be given. And it hath long time beene used in Westminster hall, which king *William Rufus* builded for the hall of his owne house. In that hal be ordinarily seene 3. Tribunals or Judges seates. At the entrie on the right hande, the common place, where civill matters are to be pleaded, specially such as touch landes or contractes. At the upper ende of the hall, on the right hand, the kinges bench, where pleas of the crowne have their place. And on the left hande sitteth the Chauncelor accompanied with the master of the Roules, who in latine may be called *custos archivorum regis*, and certaine men learned in the civill lawe called Masters of the chauncerie, in latine they may be named *Assessores*.

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Of the times of pleading called termes, &
of the Chauncelor and chauncerie.

CHAP. II.

TWO things may be moved in question here, how all Englande (being so long and so large, and having so many shyres and provinces therein) can be answered of justice in one place, and in 3. benches be they never so great? An other (whereas the kinges bench is exercised in criminall causes and in all pleas of the crowne, and the common place in all civill causes, reall and personall) what place then hath the chauncerie?

The first question will seeme more marvelous and have more occasion of doubt, when I shall also tell that the lawe is not open at all times, no not the third part of the yeare. But where all other cities and common wealthes had all the yeare pleas, suites, and judgements. except for certaine holy daies and harvest and vintage, or when for some urgent cause the lawe was commaunded to be stopped, which is called *Justitium*: Contrarie in ours, it is but fewe times open. That is onely foure times in the yeare which they call termes. After Michaelmas about ten daies, during five or sixe weekes at the least. After Christmas about a moneth, enduring by the space of three weekes. Then from xvii. dayes after Easter by the space of three weekes and odde dayes. Likewise from the sixt or seventh day after Trinitie sunday, during two weekes and odde daies. All the rest of the yeare there is no pleading, entring nor pursuing of actions.

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This small time, and all that but in one place may seeme verie injurious to the people, who must be faine to suffer much wrong for lacke of Justice and of place and time to pleade: but unto that heereafter I entende to answere more fully, and in the meane while that shall suffice which the wise *Cato* aunswered to one who mooved that the pleading place in Rome might be covered over with canvas as their theaters were, to the intent that the plaintifes and defendantes that were there might plead their matters more at ease, and not be in so much danger of their health by the heate of the sunne striking full and open upon their heades, which was no smal griefe and disease, specially at Rome. Nay (saith *Cato*) for my part I had rather wish that all the waies to the place of pleading were cast over with galthrops, that the feete of such as love so well pleading, should feele so much paine of those prickes in going thither as their heades doe of the sunne in tarrying there: he ment that they were but idle, whot heades, busie bodies, and troublesome men in the common wealth that did so nourish pleading: good labourers and quiet men could bee content to ende their matters at home by judgement of their neighbours and kinsfolke without spending so their money upon procurers and advocates whom we call attornies, counsellers, Sergeantes, and generallie men of lawe. Those he accounted profitable citizens, who attende their honest labour and businesse at home, and not stande waiting and gaping uppon their rolles and processe in the lawe: as for the other by his judgement, it was no matter what mischiefe they suffered. To the other question of the chancerie, this I answere: That our lawe which is called of us the common lawe as ye

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would say *Jus civile*, is and standeth upon ἀκριβο-
 δίκαις, that is *Jus summum*: and their maximees be
 taken so straitlie that they may not depart from the
 tenour of the wordes even as the olde civill lawe was.
 And therefore as that lacked the helpe of a *Prætor*
 (which might *moderari illud jus summum*, give actions
 where none was, mitigate the exactnesse and rigour
 of the lawe written, give exceptions, as *metus, doli
 mali, minoris ætatis, &c.* for remedies, and maintaine
 alwaies *æquum & bonum*;) the same order and rancke
 holdeth our chauncerie, and the chauncellor hath the
 verie authoritie heerein as had the *Prætor* in the olde
 civill law before the time of the Emperours. So he
 that putteth up his bill in the chauncerie, after that
 he hath declared the mischief wherein he is, hath
 releefe as in the solemne *forum*. And for so much
 as in this case hee is without remedie in the common
 lawe, therefore he requireth the chauncellor according
 to equitie and reason to provide for him and to take
 such order as to good conscience shall appertaine. And
 the court of the chauncerie is called of the common
 people the court of conscience, because that the chaun-
 cellor is not strained by rigour or forme of wordes of
 lawe to judge but *ex æquo* and *bono*, and according
 to conscience as I have said. And in this court the
 usuall and proper forme of pleading of Englande is
 not used, but the forme of pleading by writing,
 which is used in other countries according to the
 civill lawe: and the tryall is not by xii. men, but by
 the examination of witsnesse as in other courtes of
 the civil lawe.

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Of Judges in the common lawe of England, and the manner of tryall and pleading there.

CHAP. 12.

THe Prince out of the numbers of those who have beene Counsellors or Sergeants at the law, which be those who in latin are called *causidici* or *advocati*, chooseth two of the most approved for learning, age, discretion, and exercise, of whom the one is called chiefe Justice of the Kings bench, or simply chiefe Justice, the other chiefe Justice of the common place, and others to the number of sixe or more, which have each an ordinarie fee or stipend of the Prince.

These doe sit at such daies as be terme, which may be called *Dies legitimi juridici* or *fasti*, in their distinct places as I have said before. There they heare the pleading of all matters which doe come before them: and in civill matters where the pleading is for money or land or possession, part by writing, and part by declaration and altercation of the advocates the one with thother, it doeth so proceede before them till it doe come to the issue, which the latines doe call *statum causæ*, I doe not meane *contestationem litis*, but as the Rhetoritians doe call *statum*, we doe most properly call it the issue, for there is the place where the debate and strife remaineth (as a water held in a close and darke vessel issueth out, is voided and emptied) and no where else: that stroke well striken is the departing of all the quarells. Issues or *status* in our lawe bee ordinarily two, *facti* and *juris*.

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Of the two manner of issues.

CHAP. 13.

IF the question be of the lawe, that is if both the parties doe agree upon the fact, and each doe claime that by lawe he ought to have it, and will still in that sort maintaine their right, then it is called a demurrer in lawe: where if in the lawe the case seeme to the Judges that sitte doubtfull, it is called a checkerchamber case, and all the Judges will meete together, and what they shall pronounce to be the lawe, that is helde for right, and the other partie looseth his action or lande for ever. If the Sergeants or counsellors doe stand upon anie point in the law which is not so doubtfull, the Judges who be taken for most experte biddes him goe forwarde: and if he hath no other to say but standeth uppon that point of the lawe, that bidding goe forwarde is taken that he looseth his action, and the defendant is licensed to depart without a day: and this is where the issue or question is of the lawe or *Juris*. So is that case where the lawe is not doubtfull according to the matter contayned in the declaration, answere, replication, rejoinder or triplication, the Judge out of hande decideth it. And it is the manner that each partie must agree to the other stil in the fact which he cannot denie. For if he once come to denie any deede as not doone, not his writing, that the man by whome the adversarie claimeth was not the adversaries auncestor, or the evidence which his adversarie bringeth is not true, or that his gift was former, or any such

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like exception which is vaileable to abate the action or barre the partie: and the other joyneth in the affirmative and will averre and prove the same, this is called the issue, and immediatly all question of the lawe ceaseth as agreed by both the parties, that there is no question in the lawe. Then as that issue *facti* is founde by the xij men of whom wee shall speake heerafter, so the one partie or other looseth his cause and action: so that contrarie to the maner of the civill lawe where first the fact is examined by witnesses, indices, tormentes and such like probations to finde out the truth thereof, and that doone the advocats doe dispute of the lawe to make of it what they can: saying, *ex facto jus oritur*: heere the Sergeantes or counsellors before the Judges doe in passing forewarde with their pleading determine and agree upon the lawe, and for the most part and in manner all actions as well criminal as civill, come to the issue and state of some fact which is denied of the one partie, and averred of the other: which fact being tried by the xij men as they find, so the action is wonne or lost. And if a man have many peremptorie exceptions (peremptorie exceptions I call onely those which can make the state and issue) because the xij men be commonly rude and ignorant, the partie shalbe compelled to choose one exception whereupon to founde his issue, which chosen if he faile in that by the verdict of xij men, he looseth his action and cause, and the rest can serve him for nothing.

Having seene both in France and other places manie devises, edictes and ordinaunces howe to abridge proces and to finde howe that long suites in law might be made shorter: I have not perceived nor

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reade as yet so wise, so just, and so well devised a meane found out as this by any man among us in Europe.

Trueth it is that where this fashion hath not bene used and to them to whom it is newe, it will not be so easily understood, and therefore they may peradventure be of contrarie judgement: but the more they doe weigh and consider it, the more reasonable they shall finde it.

Howe the issue, question or *status juris* is decided, I have tolde: now I will shewe howe it is tryed when it doth come to the question, state or issue of the deede or fact. And first I must speake more largely of the manner of proceeding in the processe, and of such persons as be necessary for the execution thereof.

Of the sherife of the shire, and of the court of exchequer.

CHAP. 14.

THE Romans had to execute the commaundementes of the magistrates *Lictores*, *viatores*, *accensos*. The civill lawe sith that time hath other names, termes, and officers. The execution of the commaundementes of the magistrates in England is ordinarily doone by the sherifes. The sherife (which is as much to say as the Reeve or Bayly of the shire) is properly word for word *Questor provinciæ*: it is he which gathereth uppe and accompteth for the profittes of the shire, that come to the exchequer. The exchequer (which is *fiscus principis*, or *ærarium publicum*,

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and I cannot tell in what language it is called *Scaccarium*, some thinks that it was first called *statarium*, because that there was the stable place to account for the revenues of the crowne, aswell that which came of the patrimony which we cal the demeesnes: as that which commeth of other incident acquisitions be they rentes, customes, tenthes, quinziesmes, taxes, subsidies, wheresoever the Prince or his court be according to the time and occasion) was a place stable, continual and appointed for to reckon and account. The hearers of the account (who in latin may be called *tribuni ærarij*) have auditors under them which the Latines doe call *Rationales*: but they are the chiefe for the accounts of the Prince, and may be called *Juridici rationales*, in English we cal them Barons of the exchequer, whereof is one who is called the chiefe Baron, as *Tribunus* or *Juridicus rationalis primus* or *princeps*. The chiefe of all is called high treasurer of Englande, as you would say in latin *Supremus ærarij anglici quæstor*, or *Tribunus ærarius maximus*. In this court be heard *Quadruplatores* (which we call promoters) which be those that in popular and penall action be *delatores*, having thereby part of the profit by the lawe assigned. In this court if anie question be, it is determind after the order of the common lawe of Englande by the xij men as I have saide: and all customers which were in latin called *publicarij* in Greeke *τελώναι*, do account in this office. The Sherife of the shire is called in our common latin *Viccomes*, as one would say *vicarius comitis* or *procomes*, doing that service to attende upon the execution of the commaundementes of the Tribunalles or Judges which the Earle or countie should doe, which Earle or

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Countey for the most part was attending upon the Prince in the warres or otherwise about the Prince as the worde beareth, *comes principis*: whereby it may appeare that the chief office of the Countie or Earle was to see the kinges Justice to have course and to be well executed in the shire or Countie, and the Princes revenues well answered and brought in *ærarium principis*, which is called of us the treasurie.

If any fines or amerciaments, which in latin be called *multæ*, be levied in anie of the saide courtes upon any man, or any arrerages of accountes by the latins called *reliqua*, of such thinges as is of customes, taxes, subsidies or any other such occasions, the same the sherife of the shire doth gather and is respondent therefore in the exchequer. As for other ordinarie rentes of patrimoniall landes and most commonly for the taxes, customes, and subsidies, there be particular receivers and collectors which doe answere it into the exchequer. The sherife hath under him an under sherife at his charge and appointment learned somewhat in the law, especially if he be not learned himselfe, and divers bailifes which be called errantes, whom he maketh at his pleasure, who can knowe ech lande and person in the shire, and their abilitie to goe upon enquestes, either to distreine or to summon him to appeare whom the sherife shal appoint, and for this cause to the sherifes as to the minister most proper of the lawe the writtes be directed.

When any thing commeth to an issue of the deede or fact, there is a writ or writing directed to the sherife of the shire where the lande is, whereupon the controversie is, or where the man dwelleth of whome the money is demaunded, which writ is called *venire*

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facias. Then after the same effect an *alias*, *pluries* or *distringas* according to the nature of the action to the returne of the sherife. And if for any disobedience of not comming and appearing there be a fine (which the latins doe call *Muletta*) set upon any iurors head, the sherife is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therefore to the exchequer. The sherife also is readie by himselfe or by his undersherife to serve aswell the Justices of peace in their quarter sessions as the Justices called *Itinerantes* in their great assises, when they come into the shire, which is twise in the yeare, to dispatch and voide actions criminall and civil depending at the common law, and which be come nowe to the issue. He hath also the charge of all the prisoners committed to the prison which we call the gaole, and when any is condemned to die, it is his charge to see the sentence executed. To be short, he is as it were the generall minister and highest for execution of such commaundementes according to the lawe as the Judges do ordaine, and this is ynough for the sherife.

Of the xij. men.

CHAP. 15.

OF what manner and order of men in the common welth the xij men be I have alreadie declared. The sherife alwaies warneth xxiiij to appeare, least peradventure any might be sicke or have a just cause of absence: and if there be not enowe to make an enquest, the absentes be amersed. For although they be called xij men as a man would say *duodecim viri*, yet if they be xvj, xx or the whole number of xxiv, that

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is no matter, xij they must be at the least to make an enquest or as some call it a quest. An enquest or quest is called this lawfull kinde of tryall by xij men. In actions civill which is either of contractes or for lande or possession when so many of those which be warned appeare at the call as be able to make an enquest, which as I saide before be no lesse then xii, either part when they be come taketh their chalenges against so many of them as they will, which be that he may not spende so much lande a yeare, he is alied, feed, or servant to his adverse partie, he is his enemie &c. And two of the whole number doe trie and allowe or disallowe the rest. If after exceptions there be so many rejected that there is not a full enquest, in some cases that day is lost, in some the enquest is filled *ex circumstantibus*: when the quest is ful, they be sworne to declare the truth of that issue according to the evidence and their conscience. Then the Sergeantes of either side declare the issue, and each for his client sayth as much as he can. Evidences of writings be shewed, witnesses be sworne, and heard before them, not after the fashion of the civill law but openly, that not only the xii, but the Judges, the parties and as many as be present may heare what ech witness doeth say: The adverse partie or his advocates which wee call counsellors and sergeants interrogateth sometime the witnesses, and driveth them out of countenance. Although this may seeme strange to our civillians nowe, yet who readeth *Cicero* and *Quintillian* well shall see that there was no other order and maner of examining witnesses or deposing among the Romans in their time. When it is thought that it is enough pleaded before them, and the witnesses have saide what

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they can, one of the Judges with a briefe and pithie recapitulation reciteth to the xii in summe the argumentes of the sergeantes of either side, that which the witnesses have declared, and the chiefe pointes of the evidence shewed in writing, and once againe putteth them in minde of the issue, and sometime giveth it them in writing, delivering to them the evidence which is shewed on either part, if any be, (evidence heere is called writings of contractes autentical after the manner of England, that is to say, written, sealed and delivered) and biddeth them goe together. Then there is a baylife charged with them to keepe them in a chamber not farre off without bread, drinke, light, or fire untill they be agreed, that is, till they all agree upon one verdite concerning the same issue, and uppon one among them who shall speake for them all when they be agreed: for it goeth not by the most part, but each man must agree. They returne and in so fewe wordes as may be they give their determination: fewe I call vi or vii or viii wordes at the most (for commonly the issue is brought so narrow, that such number of words may be ynough to affirme or to denie it) which doone they are dismissed to goe whither they will. The partie with whom they have given their sentence, giveth the enquest their dinner that day most commonly, and this is all that they have for their labour, notwithstanding that they come some xx some xxx or xl miles or more, to the place where they give their verdite all, the rest is of their owne charge. And necessarilie all the whole xii must be of the shire and iiii of them of the hundred where the lande lyeth which is in controversie, or where the partie dwelleth who is the defendant.

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Of parties of Shires called hundreds, lathes, rapes, wapentakes.

CHAP. 16.

AN hundred, or lath, rape, or wapentake be called of the divisions or partes of shires in divers countries diversly named after the manner and language of each country. For the shires be divided some into x. xii. xiii. xvi. xx. or xxx. hundreds, more or lesse, either that they were at the first C. townes and villages in eche hundred: and although now they be but xvi. xx. xxx. xl. l. lx. more or lesse, yet it is still called an hundred, or else there were but so many at the first as be nowe, or a few more or lesse, and they did finde the king to his warres an hundred able men. Lath, and rape I take to be names of service, for that so many townes in old time, and in the first povertie of the Realme did meete together in one day to carrie the Lordes corne into his barne, which is called in olde English a Lath. Or that they mette at commaundement of the Lorde to reape his corne.

Wapentake I suppose came of the Danes or per-adventure of the Saxons. For that so manie townes came by their orders then, to one place, where was taken a mouster of their armour and weapons, in which place from them that could not finde sufficient pledges for their good abearing, their weapons were taken away: weapen or wapen in olde English doe signifie all armes offensive, as sworde, dagger, spear, launce, bill, bowes, arrowes.

Of the place where the monsters were taken or where the saide services were doone, the hundreds,

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Lathes, Rapes, and wapentakes had and have yet their names, which be most commonly good townes, and it is to be thought at the first they were all such. But sometime nowe in places whereof the hundred hath the name, no mention nor memorie of a towne remaineth, such mutation time bringeth with it of all things. A hundred hath one or two high Constables, who hath some authoritie over all the lower, and particular Constables. Those high Constables bee made by the Justices of the peace of the shire, and each hundred hath his baylife, who is made by the Lorde if any hath that libertie, or else by the sherife of the shire for the time being.

Of the court Baron.

CHAP. 17.

IT may appeare strange that of xxxvi shires, whereof each shire is divided into divers hundreds, each hundred containing diverse parishes, all pleading should be but in one place, that is in Westminster hall, and that but in certaine times of the yeare, making little more than one quarter of the yeare in the whole. And one would thinke that there should be much lacke of Justice and right, and much wrong taken without redresse. But it is not so: The people being accustomed to live in such an equalitie of Justice, and that in such sort that the rich hath no more advantage therein than the poore, the proces, and proceedinges to the judgement being so short, and judgementes also being peremptorie and without appellation: Yet to helpe for small matters, where no great summe is in

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question there are other courtes. In everie shire from three weekes to three weekes the sherife for small thinges not passing xl. s. and in certaine hundreds and liberties the baylie likewise from three weekes to three weekes holdeth plea. And whosoever is possessioner and owner of a mannor, may holde from three weekes to three weekes, or at his pleasure of his tennantes and amongst his tennantes a court called a court Baron. And there his tennantes being sworne make a Jurie which is not called the enquest, but the homage. These principallie doe enquire of the copie holders, and other free holders that be dead sith the last court, and bring in their heires, and next successours, and likewise of incrochment or intrusion of anie of the tennantes against the Lorde, or among themselves. They make orders and lawes amongst themselves, the paine of them if they be after broken, commeth to the Lorde. And if anie small matter be in controversie, it is put to them, and commonly they doe ende it. But these courtes doe serve rather for men that can be content to be ordered by their neighbours, and which love their quiet and profit in their husbandrie, more than to be busie in the lawe. For whether partie soever will, may procure a writte out of the higher court to remoove the plea to Westminster.

In cities and other great townes there be diverse liberties to holde plea for a bigger summe, which doe determine aswell as the common lawe, and after the same manner, and yet for them that will, it may be removed to Westminster hall.

King *Henrie* the eight ordained first a president, Counsellers and Judges, one for the marches of Wales,

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at Ludlowe, or else where: an other for the north parts of Englande at Yorke, where be manie causes determined. These two are as be Parliaments in Fraunce. But yet if there be anie matter of great consequence, the partie may moove it at the first, or remove it afterwarde to Westminster hall, and to the ordinarie Judges of the Realme, or to the Chaunceller, as the matter is.

These two courtes doe heare matters before them, part after the common lawe of Englande, and part after the fashion of the chauncerie.

Of the Leete or lawe day.

CHAP. 18.

Leete or law day is not incident to everie mannor, but to those onely which by special graunt, or long prescription have such libertie. This was as it may appeare first a speciall trust and confidence and commission given to a fewe put in trust by the Prince, as is now to the Justices of peace, to see men sworne to the Prince, to take pledges and suerties in that maner of one for an other to answer for obedience and truth, to enquire of privie conspiracies, fraies, murders, and bloudsheddes, and to this was added the oversight of bread and ale, and other measures. Many times they that be out of the homage and court Baron of that mannor and Lordship, be nevertheless astreined and answerable to come to the Leete. This Leete is ordinarily kept but twice in the yeare, and that at termes and times prescribed.

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The Leete or Lawe day is all one, and betokeneth worde for worde, *legittimum* or *iuridicum diem*. Lawe the olde Saxons called *lant* or *lag*, and so by corruption and chaunging of language from *Lant* to *Leete*, understanding day. They which keepe our full english terme, call it yet lawe day.

Of the proceedinges of causes criminall, and first of the Justices of the Peace.

CHAP. 19.

BEfore the maner of proceeding in causes criminall can be well understood, it will be necessarie to speake of three persons, the Justices of peace, the Coroners, and the Constables. The Justices of peace be men elected out of the nobilitie, higher and lower, that is the Dukes, Marquises, Barons, Knightes, Esquiers, and Gentlemen, and of such as be learned in the lawes, such and in such number as the Prince shall thinke meete, and in whome for wisdom and discretion he putteth his trust, inhabitantes within the countie: saving that some of the high nobilitie and chiefe magistrates for honors sake are put in all, or in the most of the commissions of all the shires of England. These have no time of their rule limited but by commission from the Prince alterable at pleasure.

At the first they were but iiij, after viij, nowe they come commonly to xxx or xl in everie shire, either by increase of riches, learning, or activitie in policie and governement. So manie more beeing founde, which

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have either will, or power, or both, are not too manie to handle the affaires of the common wealth in this behalfe. Of these in the same commission be certaine named, which be called of the *Quorum*, in whome is especiall trust reposed, that where the commission is given to xl or xxx, and so at the last it commeth to iiij or three, it is necessarie for the performance of many affaires to have likewise diverse of the *Quorum*. The wordes of the commission be such, *Quorum vos A. B. C. D. E. F. unum esse volumus.*

The Justices of the peace be those in whom at this time for the repressing of robbers, theeves, and vagabunds, of privie complots and conspiracies, of riotes, and violences, and all other misdemeanors in the common wealth, the Prince putteth his special trust. Each of them hath authoritie upon complaint to him made of any theft, robbetrie, manslaughter, murder, violence, complotes, riottes, unlawefull games, or any such disturbance of the peace, and quiet of the Realme, to commit the persons whom he supposeth offenders, to the prison, and to charge the Constable or sherife to bring them thither, the gaoler to receive them and keepe them till he and his fellowes doe meete. A fewe lines signed with his hande is ynough for that purpose: these doe meete foure times in the yeere, that is, in each quarter once, to enquire of all the misdemeanors aforesaide: at which daies the sherife, or his undersherife with his baylifes be there to attende uppon him, who must prepare against that time fower enquestes of xxiiij yeomen a peece of diverse hundredes in the shire, and besides one which is called the great enquest out of the bodie of the shire mingled with all. These five enquestes are sworne before them to enquire of all

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heretiques, traitors, theftes, murders, manslaughteres, rapes, false moniers, extortioners, riottes, routes, forcible entries, unlawfull games, and all such thinges as be contrarie to the peace and good order of the Realme, and to bring in their verdict. If they among themselves upon their owne knowledge doe finde any culpable, they cause one of the clerkes to make the bill. And if any be there to complaine uppon any man for these faults, he putteth in his bil, which bil is presented first to the Justices sitting upon the bench, to see if it be conceived in forme of lawe, which doone the complainant doth deliver it to one of these enquests, and after the complainant is sworne, he declareth to them what he can, for the profe of it. And if they finde it true they do nothing but write on the backside of it, *billa vera*, as ye would say, *scriptum verum*: or *accusatio iusta*, or *reus est qui accusatur*: Then he who is there named is called indicted.

If they do not finde it true, they write on the backside *ignoramus*, and so deliver it to the Justices of whome it is rent into peeces immediatly: he that is indicted is accounted a lawfull prisoner, and after that time looked more streitly unto. For this inditement is no conviction: and if he be indicted, and be not alreadie in prison, the sherife if he can finde him, bringeth him into prison: if he cannot finde him, proces is made out against him, to render himselfe prisoner, or else hee shalbe outlawed. So he is called three times in diverse countie daies to render himselfe to the lawe. The fourth is called the exigent, by which he is outlawed not rendring himselfe, as ye would say: *exactus* or *actus in exilium*. The outlawe looseth all his goods to the King for his disobedience.

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But if after he wil render himselfe to answer to the lawe, and shewe some reasonable cause of his absence, manie times of grace his outlawerie is pardoned. These meetinges of the Justices of peace foure times in the yeare, be called quarter sessions or sessions of enquirie, because that nothing is there determined touching the malefactors, but onely the custodie of them: and this kinde of proceeding which is by inquisition of the xij men within themselves, and their owne consciences, or by denunciation of him that putteth in his bill to the xij, is called at the kings suite, and the king is reckoned the one partie, and the prisoner the other. The Justices of the peace doe meete also at other times by commandement of the Prince upon suspicion of warre, to take order for the safetie of the shire, sometimes to take musters of harnes and able men, and sometime to take orders for the excessive wages of servaunts and labourers, for excesse of apparell, for unlawfull games, for conventicles and evill orders in alehouses, and tavernes, for punishment of idle and vagabund persons, and generally as I have saide, for the good government of the shire, the Prince putteth his confidence in them. And commonly every yeare, or each seconde yeare in the beginning of summer or afterwarde, (for in the warme time the people for the most part be more unrulie) even in the calme time of peace, the Prince with his counsell chooseth out certaine articles out of penall lawes already made for to repress the pride and evill rule of the popular, and sendeth them downe to the Justices, willing them to looke upon those pointes, and after they have mette together and consulted among themselves, howe to order that matter most wisely and circumspectly,

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whereby the people might be kept in good order and obedience after the lawe, they divide themselves by three or foure : and so each in his quarter taketh order for the execution of the saide articles. And then within certaine space they meete againe and certifie the Prince or his privie counsell how they do finde the shire in rule and order touching those pointes and all other disorders. There was never in any common wealth divided a more wise, a more dulce and gentle, nor a more certaine way to rule the people, whereby they are kept alwaies as it were in a bridle of good order, and sooner looked unto that they should not offend, than punished when they have offended. For seeing the chiefe amongst them, their rulers to have this speciall charge and doe call upon it, and if occasion so doe present, one or two presently either punished or sent to prison for disobedience to those olde orders and lawes, they take a feare within themselves, they amende and doe promise more amendment. So that it is as a newe forbushing of the good lawes of the realme, and a continuall repressing of disorders, which doe naturally rest among men. But as the invention of this, and the use and execution thereof is the most benefitte that can be devised for the common wealth of Englande : So when it shalbe misused, dissembled with, or be contemned, and be doone *pro forma tantum*, and as they terme it in Fraunce *par mainere d'acquit* onely, it will be the present ruine (though not at the first apperceiued) of the common wealth. Of which the fault may be as well in the commaunders for not making good choice what and howe they commaunde, as in the commaunded, for not executing that which is commaunded.

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Of hue and crie and recognisaunce

taking uppon them that may
give evidence.

CHAP. 20.

BY the olde lawe of Englande if any theft, or
robberie be doone, if he that is robbed, or he that
seeth or perceiveth that any man is robbed doe levie
hue and crie, that is to say, doe call and crie for aide,
and say that a theft or robberie is doone contrarie to
the Princes peace and assurance: The Constable of
the village to whom he doth come, and so make that
crie, ought to raise the parish to aide him and seeke the
theefe, and if the theefe be not founde in that parish,
to go to the next and raise that Constable, and so still by
the Constables and them of the parish one after an
other. This hue and crie from parish to parish is
caried, till the theefe or robber be founde. That
parish which doeth not his dutie, but letteth by their
negligence the theefe to depart, doth not onely paie a
fine to the king, but must repaie to the partie robbed
his dammages. So that everie English man is a sergiant
to take the theefe, and who sheweth himselfe negligent
therein, doth not only incur evill opinion therefore, but
hardly shall escape punishment: what is doone with
the theefe or robber when he is taken, I shall shewe
you hereafter. The same manner is followed if anie
man bee slaine, for streight the murtherer is pursued of
everie man till he be taken. So soone as any is brought
to the Justices of peace by this hue or crie, by the
Constable or anie other who doth pursue the male-
factor, he doeth examine the malefactor, and writeth

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the examination and his confession : then he doth binde the partie that is robbed or him that sueth, and the Constable, and so manie as can give evidence against the malefactor to be at the next sessions of gaole deliverie to give their evidence for the Queene. He bindeth them in recognisance of x.l'. xx.l'. xxx.l'. xl.l'. or C. l'. according to his discretion, and the qualitie of the crime : which certified under his hande, is levied upon the recognizance if they faile of being there.

Of the Coroner.

CHAP. 21.

BUt if anie man, woman, or child, be violently slaine, the murtherer not knowen, no man ought or dare burie the bodie before the Coroner hath seene it. The Coroner is one chosen by the Prince of the meaner sort of gentlemen, and for the most part a man seene in the lawes of the Realme to execute that office. And if the person slaine, (slaine I cal here, whosoever he be, man, woman, or childe that violently commeth to his death, whether it be by knife, poyson, cord, drowning, burning, suffocation, or otherwise, be it by his owne fault or default, or by any other) if (I say) the person slaine be buried before the Coroner doe come (which for the most part men dare not doe) he doeth cause the bodie to be taken up againe, and to be searched, and upon the sight of the bodie so violently come to his death, he doth empanell an enquest of xij men or mo, of those which come next by, be they strangers or inhabitantes, which upon their othes, and by the sight or viewe of the bodie, and by such informa-

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tions as they can take, must search howe the person slaine came to his death, and by whome as the doer or causer thereof. These are not inclosed into a streit place, (as I tolde before of other enquestes) but are suffered to goe at large, and take a day, sometime after xx or xxx daies, more or lesse, as the fact is more evident, or more kept close, to give their evidence, at which day they must appeare there againe before the saide Coroner to give their verdict. So sometime the person slaine himselfe, sometime the brother, the husbände, the wife, the sister, some of acquaintance or stranger, such as God wil have reveiled, be taken. For whosoever they doe finde as guiltie of the murder, he is streight committed to prison, and this is against him in the nature of an inditement, which is not a full condemnation, as ye shall see heereafter.

The empanelling of this enquest, and the viewe of the bodie, and the giving of the verdict, is commonly in the streete in an open place, and in *Corona populi*: but I take rather that this name commeth because that the death of everie subject by violence is accounted to touch the crowne of the Prince, and to be a detriment unto it, the Prince accounting that his strength, power, and crowne doth stande and consist in the force of his people, and the maintenaunce of them in securitie and peace.

Of the Constables.

CHAP. 22.

These men are called in the elder bookes of our lawes of the Realme *custodes pacis*, and were at the first in greater reputation than they be nowe. It

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may appeare that there was a credit given unto them not altogether unlike to that which is now given to the Justices of peace. To this day if any affraie chaunce to be made, the Constables ought and will charge them that be at debate to keepe the Princes peace: and whosoever refuseth to obey the Constable therein, all the people will set streight upon him, and by force make him to render himself to be ordered. Likewise if any be suspected of theft, or receiving, or of murther, or of manslaughter, the Constable may take such persons, yea enter into any mans house with sufficient power to search for such men till he finde them: and if hee see cause keepe the suspected persons in the stockes, or custodie, til he bring them before a Justice of the peace to be examined. But for so much as everie litle village hath commonly two Constables, and many times artificers, labourers and men of small abilitie be chosen unto that office, who have no great experience, nor knowledge, nor authoritie, the Constables at this present (although this they may do upon their owne authoritie) yet they seeme rather to be as it were the executors of the commaundement of the Justices of peace. For the Justice of peace as soon as he understandeth by complaint that any man hath stolen, robbed, slaine, or any servant or labourer without licence hath departed out of his maisters service, or any that liveth idle and suspectly, knowing once in what parish he is, he writeth to the Constable of the parish, commanding him in the Princes name to bring that man before him: the Constable dareth not disobey. The man is brought and examined by the Justice, and if the Justice doe finde cause, hee committeth him to the same Constable to convey him

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further to the Princes gaole, where the partie must lie till the Justices of peace doe meete either at their quarter sessions, or at their gaole deliverie, and that the lawe hath either condemned or acquitted him. These Constables are called in some places headborowes, in some places tithingmen, and be like to them, who are called Consuls in manie townes and villages in Fraunce. The Constables are commonlie made and sworne at the Leetes of the Lordes, chosen thereto by the homage, and they keepe that office sometime ij. iij or iiij yeare, more or lesse, as the parish doth agree. What headborow doth betoken it is easily knowen, our language doth declare him as the head or chiefe of the borowe or village : likewise tithing man is the cheife of the tithing. Constable seemeth to me to come of our olde English word *kinnyng*, which is *Kinnyngstable*, as ye would say a man established by the king, for such things as appertaineth to pleas of the crowne and conservation of the Kings peace, and as I saide at the first were in some more reputation, approching to that authoritie which the Justices of peace nowe doth holde.

Of the sessions of gaole deliverie, and
the definitive proceedinges in
causes criminall.

CHAP. 23.

HOwe theeves and murtherers and other malefactors against the crowne and the peace are taken and brought into holde to answer to iustice, partly by hue and crie, partly by information, and partly by the diligence of the Justices of peace and the

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Constables, and howe that at the quarter sessions they be indicted, or else by the Coroners yee have hearde before. Enditement (as yee may perceive by that which is also gone before) is but a former judgement of xij men which be called enquirers, and no definitive sentence, but that which in latin is called *præjudicium*, it doeth but shewe what opinion the countrey hath of the malefactor: and therefore commonly men be indicted absent, not called to it, nor knowing of it. For though a man be endicted, yet if when he come to the arainement, there be no man to pursue further, nor no evidence of wisse or other triall and *indices* against him, he is without difficultie acquitted. No man that is once indicted can be delivered without arainement. For as xij have given a prejudice against him, so xij againe must acquite or condemne him. But if the prisoner be not indicted, but sent to prison upon some suspition or suspitious behaviour, and none doe pursue him to the enditement, first being proclaimed thus, *A. B.* prisoner standeth heere at the barre, if any man can say any thing against him, let him now speake, for the prisoner standeth at his deliveraunce: if no man doe then come, hee is delivered without any further proces or trouble, agreeing first with the gaoler for his fees. And these be called acquitted by proclamation. Twise everie yeare the one is commonly in lent what time there is vacation from pleading in Westminster hall, the other is in the vacation in summer. The Prince doth sende downe into everie shire of Englande certaine of his Judges of Westminster hall, and some Seargeantes at the lawe with commission to heare and determine joyntly with the Justices of the peace all matters criminall and all prisoners which be

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in the gaoles. These Judges doe goe from shire to shire till they have doone their circuit of so manie shires as be appointed to them for that yeare: at the ende of the terme going before their circuit it is written and set up in Westminster hall on what day and in what place they will be. That day there meeteth all the Justices of the peace of that shire, the sherife of that shire, who for that time beareth their charges, and asketh after allowance for it in the Exchequer. The sherife hath readie for criminall causes (as I writ before at the sessions of inquire) iij. v. or vj. enquestes readie warned to appeare that day to serve the Prince, and so manie more as he is commaunded to have readie to go in civill matters betwixt private men, which they call *Nisi prius*, because that worde is in the writ.

In the towne house, or in some open or common place, there is a tribunall or place of judgement made aloft upon the highest bench, there sitteth the two Judges which be sent downe in Commission in the midst. Next them on eche side, sitteth the Justices of peace, according to their estate and degree. On a lower bench before them, the rest of the Justices of the peace, and some other gentlemen or their clarkes. Before these Judges and Justices, there is a table set beneath, at which sitteth the *Custos rotulorum*, or keeper of writtes, Thexchetor, the undershirife, and such clarkes as doe write. At the end of that table, there is a barre made with a space for thenquestes and xij men to come in when they are called, behind that space another barre, and there stand the prisoners which be brought thither by the gaoler all chained one to another. Then the cryer crieth, and commaundeth silence. One of the Judges briefly telleth the cause of

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their comming, and giveth a good lesson to the people. Then the prisoners are called for by name, and bidden to aunswere to their names. And when the *Custos rotulorum* hath brought forth their enditements, the Judges do name one or two or three of the prisoners that are endicted, whom they will have arraigned. There the clarke speaketh first to one of the prisoners: *A. B.* come to the barre, hold up thy hand. The clarke goeth on: *A. B.* thou by the name of *A. B.* of such a towne, in such a countie, art endicted, that such a day, in such a place, thou hast stolen with force and armes an horse, which was such ones, of such a colour, to such a valor, and carried him away feloniously, and contrarie to the peace of our soveraigne Ladie the Queene. What sayest thou to it, art thou guiltie or not guiltie? If he will not aunswere, or not aunswere directly guiltie or not guiltie, after he hath beene once or twice so interrogated, he is judged mute, that is dumme by contumacie, and his condemnation is to be pressed to death, which is one of the cruelliest deaths that may be: he is layd upon a table, and an other upon him, and so much weight of stones or lead laide upon that table, while as his bodie be crushed, and his life by that violence taken from him. This death some strong and stout hearted man doth choose, for being not condemned of felonie, his bloud is not corrupted, his lands nor goods confiscate to the Prince, which in all cases of felonie are commonly lost from him and his heires, if he be forejudged, that is condemned for a felon by the lawe. If he confesse the enditement to be true, then when he is arraigned, no xii. men goeth upon him, there resteth but the Judges sentence, of the paine of death.

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If he pleade not guiltie, as commonly all theeves, robbers, and murderers doe, though they have confessed the fact before the Justice of the peace that examined them, though they be taken with the maner, which in Latine they call *in flagranti crimine*, howsoever it be, if he pleade there not guiltie, the Clarke asketh him howe he will be tryed, and telleth him he must saie, by God and the Countrie, for these be the words formall of this triall after Inditement, and where the Prince is partie : if the prisoner doe say so, I will be tryed by God and the Countrie, then the Clarke replyeth, Thou hast beene endicted of such a crime, &c. Thou hast pleaded not guiltie : being asked how thou wilt be tryed, thou hast answered by God and by the Countrie. Loe these honest men that be come here, be in the place and stead of the Countrie : and if thou hast any thing to say to any of them, looke upon them well and nowe speake, for thou standest upon thy life and death. Then calleth he in the first Juror. *B. C.* come to the booke, and so giveth him an othe to goe uprightlie betwixt the Prince and the prisoner, &c. If the prisoner objecteth nothing against him, he calleth an other, and so an other, till there be xii. or above : and for the most part the prisoner can say nothing against them, for they are chosen but for that day, and are unknowen to him, nor they know not him, as I said being substantial yeomen, that dwell about the place, or at the least in the hundred, or neere where the felonie is supposed to be committed, men acquainted with daily labour and travaile, and not with such idle persons, as be readie to doe such mischiefes.

When the enquest is full, and the prisoner hath objected nothing against them, as in deede seldome he

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doeth, for the cause above rehearsed : The clarke saith to the cryer, *countes*, (in French as ye would say reckon) and so nameth all those that be on the quest. The crier at everie name cryeth aloude, one, then ii. iii. iiii. and so till the number be full of xii. or more, and then saith good men and true : and then sayth aloude : If any can give evidence, or can saie any thing against the prisoner, let him come nowe, for he standeth upon his deliverance. If no man come in, then the Judge asketh who sent him to prison, who is commonly one of the Justices of peace. He if he be there delivereth up the examination which he tooke of him, and underneath the names of those whom he hath bound to give evidence, although the malefactor hath confessed the crime to the Justice of the peace, and that appeare by his hande and confirmation, the xij. men will acquite the prisoner, but they which should give evidence pay their recognizaunce. Howbeit this doth seldome chaunce, except it be in small matters, and where the Justices of peace, who sent the prisoner to the gaole, is away. If they which be bound to give evidence come in, first is read the examination, which the Justice of peace doeth give in : then is heard (if he be there) the man robbed what he can say, being first sworne to say trueth, and after the Constable, and as many as were at the apprehension of the malefactor : and so many as can say any thing being sworn one after an other to say truth. These be set in such a place as they may see the Judges and the Justices, the enquest and the prisoner, and heare them, and be heard of them all. The Judge first after they be sworne, asketh first the partie robbed, if he knowe the prisoner, and biddeth him looke upon him : he saith yea, the prisoner sometime saith nay.

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The partie pursuivaunt giveth good ensignes *verbi gratia*, I knowe thee well ynough, thou robbedst me in such a place, thou beatest mee, thou tookest my horse from mee, and my purse, thou hadst then such a coate and such a man in thy companie : the theefe will say no, and so they stand a while in altercation, then he telleth al that he can say : after him likewise all those who were at the apprehension of the prisoner, or who can give any *indices* or tokens which we call in our language evidence against the malefactor. When the Judge hath heard them say inough, he asketh if they can say any more : if they say no, then he turneth his speeche to the enquest. Good men (saith he) ye of the enquest, ye have heard what these men say against the prisoner, you have also heard what the prisoner can say for himselfe, have an eye to your othe, and to your duetie, and doe that which God shall put in your mindes to the discharge of your consciences, and marke well what is saide. Thus sometime with one enquest is passed to the number of ij. or iij. prisoners : For if they should be charged with more, the inquest will say, my Lord, we pray you charge us with no more, it is ynough for our memorie. Many times they are charged but with one or two. At their departing, they have in writing nothing given them, but the enditement, the clarke repeating to them the effect of it, and shewing more, that if they finde him guiltie, they shall enquire what goods, lands, and tenements, the saide person had at the time of the felonie committed : and if they finde any, they shal bring it in : if no, they shal say so. If they finde him not guiltie, they shall enquire whether he fled for the felonie or no.

And there is a bailife to waite upon them, and to

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see that no man doe speake with them, and that they have neither bread, drinke, meate, ne fire brought to them, but there to remaine in a chamber together till they agree. If they be in doubt of any thing that is saide, or would heare againe some of them that give evidence to interrogate them more at full, or if any that can give evidence come late: it is permitted that any that is sworne to say the trueth, may be interrogated of them to enforme their consciences. This is to be understood although it will seeme straunge to all nations that doe use the civill Lawe of the Romane Emperours, that for life and death there is nothing put in writing but the enditement onely. All the rest is doone openlie in the presence of the Judges, the Justices, the enquest, the prisoner, and so manie as will or can come so neare as to heare it, and all depositions and witnesses given aloude, that all men may heare from the mouth of the depositors and witnesses what is saide. As of this, so is it of all other prisoners after the same sort. By that time that the enquests for the prisoners be dispatched, it is commonlie dinner time, the Judges and Justices goe to dinner, and after dinner returne to the same place: if the enquest be not readie for the prisoners, they goe to some other enquests of *nisi prius*, which be civill matters and private to drive out the time. The enquestes have no sooner agreed upon their charge one way or other, but they tell the Bailife, and pray to be heard, and considering that they be themselves all this while as prisoners as I saide before, it is no marvell, though they make expedition. The prisoners be sent for againe to the barre, the enquest which hath agreed, is called for eche one of the Jurie by his name, to which he answereth. Then the

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clarke asketh if they be agreed, and who shall speake for them. One or moe saith yea. He that speaketh for them all is called the foreman, and commonlie it is he that is first sworne: then the prisoner is bidden to holde up his hande. The clarke saith unto him, Thou art endicted by the name of *A.* of such a place, &c. being therefore arraigned thou pleadest thereto not guiltie, being asked howe thou would be tryed, thou saydst by God and thy countrie. These honest men were given to thee by God and thy Prince for thy Countrey: Harken what they say. Then he asketh of the enquest, what say you? Is he guiltie or not guiltie? The foreman maketh aunswere in one worde, guiltie, or in two, not guiltie: the one is deadlie, the other acquiteth the prisoner. So that neither Judge nor Justice hath to doe, or can reverse, alter or chaunge that matter, if they say guiltie. The clarke asketh what landes, tenements, or goods, the prisoner had at the time of the felonie committed, or at any time after. Commonlie it is aunswered that they knowe not, nor it shall not greatly neede, for the Sherife is diligent enough to enquire of that, for the Princes and his owne advantage, and so is the excheator also.

Of him whom the xij. men pronounce guiltie, the Judge asketh what he can say for himself: if he can reade, he demaundeth his Clergie. For in many felonies, as in theft of oxen, sheepe, money, or other such things, which be no open robberies, by the high way side, nor assaulting one by night in his house, putting him that is there in feare, such is the favour of our Lawe, that for the first fault the felon shalbe admitted to his Clergie, for which purpose the Bishop must send one with authoritie under his seale to be Judge in that

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matter at everie gaole deliverie. If the condemned man demandeth to be admitted to his booke, the Judge commonly giveth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can (God knoweth sometime very slenderly :) then he asketh of the Bishops commissarie, *legit ut clericus*? The commissarie must say *legit* or *non legit*, for these be wordes formall, and our men of Lawe be verie precise in their words formall. If he say *legit*, the Judge proceedeth no further to sentence of death: if he say *non*, the Judge forthwith, or the next day proceedeth to sentence, which is doone by word of mouth onelie: Thou *A.* hast beene endicted of such a felonie and thereof arraigned, thou hast pleaded not guiltie, and put thy selfe upon God and thy Countrie, they have found thee guiltie, thou hast nothing to say for thy selfe, the Lawe is, thou shalt first returne to the place from whence thou camest, from thence thou shalt goe to the place of execution, there thou shalt hang till thou be dead. Then he saith to the Sherife, Sherife doe execution: he that claimeth his Clergie, is burned forthwith in the presence of the Judges in the brawne of his hand with a hot yron marked with the letter *T.* for a theefe, or *M.* for a mansleer, in cases where Clergie is admitted, and is delivered to the Bishops officer to be kept in the Bishops prison, from whence after a certaine time by an other enquest of Clarkes he is delivered and let at large: but if he be taken and condemned the second time, and his marke espied, he goeth to hanging. He whom the enquest pronounceth not guiltie is acquitted forthwith and discharged of prison, paying the gaolers fees: and if he knowe any private man who purchased his inditement, and is able

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to pursue it, he may have an action of conspiracie against him, and a large amendes: but that case chaunceth seldome.

Certaine orders peculiar to England, touching punishment of malefactors.

CHAP. 24.

FOR any felonie, manslaughter, robbery, murther, rape, and such capitall crimes as touch not treason and *lesam maiestatem*, we have by the Lawe of England no other punishment, but to hang till they be dead: when they be dead, everie man may burie them that will, as commonly they be. Heading, tormenting, demembring, either arme or legge, breaking upon the wheele, empailing, and such cruell torments, as be used in other nations by the order of their law, we have not: and yet as few murthers committed as any where: nor it is not in the Judges or the Justices power, to aggravate or mitigate the punishment of the Lawe, but in the Prince onely and his privie Counsell, which is marvellous seldom done. Yet notable murtherers many times by the Princes commaundement, after they be hanged with corde till they bee dead, bee hanged with chaines while they rotte in the ayre. If the wife kill her husbände, shee shall bee burned alive. If the servaunt kill his master, hee shalbee drawn on a hurdle to the place of execution: it is called *petit treason*. Impoisoners, if the person die thereof, by a new lawe made in King *Henrie* the eight's time shalbe boyled to death: but this mischief is rare and almost unknowen in England. Attempting

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to impoison a man, or laying await to kill a man, though he wound him daungerously, yet if death followe not, is no felony by the lawe of Englande, for the Prince hath lost no man, and life ought to be given we say, but for life only. And againe, when a man is murdered, all be principals and shall die, even he that doth but hold the candel to give light to the murderers. For mitigation and moderation of paines, is but corruption of Judges, as we thinke. Likewise, torment or question which is used by the order of the civill lawe and custome of other countreis to put a malefactor to excessive paine, to make him confesse of him selfe, or of his felowes or complices, is not used in England, it is taken for servile. For what can he serve the common wealth after as a free man, who hath his bodie so haled and tormented, if he be not found guiltie, and what amends can be made him? And if he must die, what crueltie is it so to torment him before? Likewise, confession by torment is esteemed for nothing, for if he confesse at the judgement, the tryall of the xii goeth not upon him: If he denie the fact, that which he saide before hindereth him not. The nature of English men is to neglect death, to abide no torment: And therefore he will confesse rather to have done any thing, yea, to have killed his own father, than to suffer torment, for death our nation doth not so much esteem as a mean torment. In no place shal you see malefactors go more constantly, more assuredly, and with lesse lamentation to their death than in England. Againe, the people not accustomed to see such cruell torments, will pitie the person tormented, and abhorre the Prince and the Judges, who should bring in such crueltie amongst them, and the xij. men the rather

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absolve him. There is an olde lawe of England, that if any gaoler shall put any prisoner being in his custodie to any torment, to the intent to make him an approver, that is to saie an accuser or *Index* of his complices, the gaoler shall dye therefore as a felon. And to say the trueth, to what purpose is it to use torment? For whether the malefactor confesse or no, and whatsoever he saith, if the enquest of xij. do find him guiltie, he dyeth therefore without delaye. And the malefactor, seeing there is no remedie, and that they be his countrie men, and such as he hath himselfe agreed unto it, do finde them worthie death, yeeldes for the most part unto it, and doeth not repine, but doth accommodate himselfe to aske mercie of God. The nature of our nation is free, stout, haulte, prodigall of life and bloud: but contumelie, beatings, servitude and servile torment and punishment it will not abide. So in this nature and fashion, our auncient Princes and legislators have nourished them, as to make them stout hearted, courageous and souldiers, not villaines and slaves, and that is the scope almost of all our policie. The xij. as soone as they have given their verdict are dismissed to goe whither they will, and have no manner commoditie and profit of their labour and verdict, but onely do service to the Prince and common wealth.

Of Treason, & the trial which is used
for the higher nobilitie and Barons.

CHAP. 25.

THe same order touching trial by enquest of xij men is taken in Treason, but the paine is more cruell. First to be hanged, taken downe alive, his bowels

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taken out and burned before his face, then to be beheaded, and quartered, and those set up in diverse places. If anie Duke, Marques, or any other of the degree of a Baron, or above, Lord of the Parliament be appeached of treason, or any other capitall crime, he is judged by his peeres and equals: that is, the yeomanrie doth not go upon him, but an enquest of the Lordes of the Parliament, and they give their voice, not one for all, but eche severally as they do in Parliament, beginning at the yongest Lord. And for Judge one Lord sitteth, who is Constable of England for that day. The judgement once given, he breaketh his staffe and abdicateth his office. In the rest there is no difference from that above written.

THE THIRDE Booke.

Of that which in other countries is called
appellation, or *provocation*, to amend the judgement
or sentence definitive, which is thought
unjustly given in causes criminall.

CHAP. I.

IF the enquest of xii men do seeme to the Judges
and the Justices to have gon too violently against
the evidence given in matters criminall, either it is that
upon slender evidence they have pronounced him guiltie,
whom the Judges and most part of the Justices thinks
by the evidence not fullie proved guiltie, or for some
other cause, do thinke the person rather worthie to
live than to die. The enquest is neverthelesse dismissed:
but when the Judges should pronounce the sentence
of death upon the person found guiltie, he will differ it,
which is called to reprove the prisoner (that is to say to
sende him againe to prison) and so declare the matter
to the Prince, and obtaineth after a time for the prisoner
his pardon: and as for provocation or appeale which is
used so much in other countries, it hath no place in

✓ England, after sentence given by the xii, whereby the

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person is founde guiltie or not guiltie : but without that reuiving the sentence is streight put in execution by the sherife. And if they either escape or die an other death, the sherife escapeth not to paie a great fine and ransom at the Princes mercie : if having pregnant evidence neuertheless the xii doe acquite the malefactor, which they will doe sometime, and especially if they perceiue either one of the Iustices, or of the Judges, or some other man to pursue too much and too maliciously the death of the prisoner, and doe suspect some subornation of the witsnesse, or them which doe give evidence, and sometime if they perceiue the Judge would haue the prisoner escape, and in repeating the evidence doe give them thereof some watchworde. But if they doe as I haue saide, pronounce not guiltie upon the prisoner against whome manifest witsnesse is brought in, the prisoner escapeth : but the xii not onely be rebuked by the Judges, but also threatned of punishment, and many times commaunded to appeare in the starrechamber, or before the priue counsell for the matter. But this threatning chaunceth oftener than the execution thereof, and the xii answere with most gentle wordes, they did it according to their consciences, and pray the Judges to be good unto them, they did as they thought right, and as they accorded all, and so it passeth away for the most part. Yet I haue seene in my time (but not in the raigne of the Queene nowe) that an enquest for pronouncing one not guiltie of treason contrarie to such evidence as was brought in, were not onely imprisoned for a space, but an houghe fine set upon their heads, which they were faine to pay : An other enquest for acquiting an other, beside paying a fine of money, put to open ignominie and shame.

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But those doings were even then of many accounted verie violent, tyrannical, and contrarie to the libertie and custome of the realme of England. Wherefore it commeth verie seldome in use, yet so much at a time the enquest may be corrupted, that the Prince may have cause with justice to punish them : For they are men, and subject to corruption and parcialitie, as others be.

What remedie is, if the sentence be
thought unjustly given.

CHAP. 2.

IN causes civill there is an other order : for if after the matter be pleaded to the issue, and the xij men thereupon impaneled, the evidence brought and pleaded before them on both the parties, the xij seeme to be parciall, and to have given sentence contrarie to the evidence shewed unto them : the partie greeved may bring against them, and the partie for whome the sentence is given, a writ of attaint : and where as before upon the first quest commonly they all be yeomen, now upon this attaint must go xxiiij gentlemen dwelling within the shire, and xij at the least of the hundreth where the lande lyeth. The matter is pleaded againe before the same Judges. The partie defendant is not onely nowe he, who claimeth the lande, but also all and every of the yeomen, who by their verdict did give it him. There must in the attaint no more evidence be brought in, but onely that which was brought in, and alledged before the first enquest. And if this seconde enquest of xxiiij gentlemen do adjudge as the first did, the plaintife shall not onely

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lose the land, but also paie a fine to the Prince and damages to the partie. If this seconde enquest do finde that the first enquest hath gone parcially, and against the evidence brought in before them, the first enquest is called attainted, and accounted as perjured and infamed. The Prince had before the waste of all their lands and possessions with other punishments, which at this present by a lawe made by parliament in the time of king *Henrie* the eight is abolished, and nowe by that law or act of parliament, beside other punishment, eche of the quest attainted payeth unto the Prince and partie v. li. if it be under fourtie poundes: and if aboue, then xx. li. Attaints be verie seldome put in use, partly because the gentlemen will not meete to slaunder and deface the honest yeomen their neighbours: so that of a long time, they had rather paie a mean fine than to appeare and make the enquest. And in the meane time they will intreat so much as in them lyeth the parties to come to some composition and agreement among them selves, as lightly they do, except either the corruption of the enquest be too evident, or the one partie is too obstinate and headstrong. And if the gentlemen do appeare, gladlyer they will confirme the first sentence, for the causes which I have saide, than go against it. But if the corruption be too much evident, they will not sticke to attaint the first enquest: yet after the gentlemen have attained the yeomen, if before the sentence be given by the Judge (which ordinarily for a time is differred) the parties be agreed, or one of them be dead, the attaint ceaseth.

If at anie time before the sentence be given or put in execution, there be found some such error in the

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writ, in the proces, or forme (as our lawyers be verie precise and curious of their formes) that it may be revocable, it is brought afresh to the disputation by a writ of errour, and all that is doone reversed. But that is common to all other countries, where the civill law is used, which they call *de nullitate processus*, and serveth both in Englande and in other places aswell in causes criminall, as civill. Other kinde of appellation to revoke processes, and to make them of short, long, of long, infinite, which is used by the civill lawe, we have not in our common lawe of Englande. By supplication to the Prince and complaint to the Chauncellor upon supposall of losse or lacke of evidence, or too much favour in the countrey, and power of the adversarie, there is in our countrey as well as theirs both stopping and prolongation of Justice. For what will not busie heades and lovers of trouble never being satisfied invent in any countrey to have their desire, which is to vex their neighbours, and to live alwaies in disquiet? Men even permitted of God like flies, and lise, and other vermine to disquiet them, who would impleoie themselves upon better businesse and more necessarie for the common wealth: these men are hated, and feared of their neighbours, loved and aided of them which gaine by proces, and waxe fatte by the expence and trouble of other. But as these men ordinarily spende their owne thrift, and make others against their wils to spende theirs: so sometime being throughly knowen, they do not onely live by the losse like evill husbandes, but beside rebuke and shame, by the equitie of the Prince and courtes soveraigne, they come to be extraordinarily punished, both corporally, and by their purse, which thing in my minde is as royall and princely an

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act, and so beneficiall to the commonwealth, as in so small a matter a King or a Queene can doe, for the repose and good education of their subiectes.

Of that which in England is called appeale, in other places accusation.

CHAP. 3.

IF any man hath killed my father, my sonne, my wife, my brother, or next kinsman, I have choice to cause him to be endicted, by giving information to the enquest of enquirie, (although he chaunce to escape the Constable or Justices handes, and therefore not to be apprehended) and thereupon to procure him to be outlawed, or else within a yeere and a day I may enter my appeale, that is mine accusation against him. If I begun first to pursue him by information or denunciation to enditement, I am nowe no partie but the Prince, who for his duetie to God and his commonwealth and subjects, must see justice executed against all malefactors and offenders against the peace, which is called Gods and his, and doeth in such maner as I have saide before. If I leave that and will appeale, which is profer my accusation against him who hath doone to me this injurie, the defendant hath this advauntage to put himselfe to the Jurie, which is to that which before is saide to have that issue and triall by God and his countrie, whereof the fashion I have at large declared: or to demaunde the triall by battle, wherein both the parties must eyther themselves in person, or else finde other for them, who be called in our Law Champions

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or Champions, some doeth interprete them *ἀθλητὰς*, because they be men chosen, fat, lustie, fit to the feate, or as the *Frenche* doe terme them *adroictz aux armes*, which shall fight it out by *μονομαχία*, or as now they doe call it *duellum*, or the campe, which shall have all things equal: but according as *Mars* giveth the victorie, so the Lawe is judged the one as *peractus reus*, the other is *calumniator* to suffer the paine of death. So that by the great assise there is no appellation but death or life to the defendant, but this is more daungerous and equall, for the one or the other must die. So it is not in the grande assise, for the *reus* or defendaut is onely in daunger of death. Short it is from day to sunne set, the quarell is ended, or sooner who hath the better fortune. This seemeth very militarie (as in maner all our policie of Englande) and to have as small to doe with Lawyers as with Phisitions, quicklie to dispatche, and for the rest to returne, eche man to his businesse, to serve the common wealth in his vocation. The Popes of *Rome*, and men of the Church who of long time have had dominion in our consciences, and would bring things to a more moderation, have much detested this kinde of triall and judgement, as reason is everie man misliketh that which is not like to his education, and colde reasoning by Theologie and Philosophie: they I say much mislike many things doone necessarily in whot policie. At the least a common wealth militarie must adventure many things to keepe it in quiet, which cannot seeme so precisely good to them which dispute thereof in the shadowe and in their studies: Howsoever it be, this kinde of triall of long time hath not beene used. So that at this time we may rather seeke the experience of

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it out of our histories of time passed, than of any viewe or sight thereof, of them which are nowe alive. Neverthelesse the Lawe remaineth still, and is not abolished, and if it shall chaunce the murtherer or mansleer (the one we call him that lyeth in waite, and as they terme it in Frenche *de guet appendaunt* killeth the man, the other who by casuall falling out and sodaine debate and choller doeth the same which way soever it be doone) if he that hath slaine the man, hath his pardon of the prince, as occasion or the favour of the Prince may so present, that he may have it, yet the partie grieved hath these two remedies, I say to require justice by grand assise, or battle upon his appeale and private revenge, which is not denyed him. And if the defendant either by great assise or by battle be convinced upon that appeale, he shall die, notwithstanding the Princes pardon. So much favourable our Princes be, and the lawe of our Realme to justice and to the punishment of blood violently shed.

Of the Court of Starre Chamber.

CHAP. 4.

There is yet in Englande an other court, of the which that I can understand there is not the like in any other Countrie. In the Terme time (the Terme time as I have heretofore shewed, I call the time and those daies when the Lawe is exercised in Westminster hall, which as I have said is but at certaine times and termes) every weeke once at the least, (which is commonly on Fridaies, and Wednesdaies, and the

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next day after that the terme doeth ende,) the Lorde Chauncellor, and the Lordes and other of the privie Counsell, so many as will, and other Lordes and Barons which be not of the Privie Counsell, and be in the towne, and the Judges of England, specially the two chiefe Judges, from ix. of the clocke till it be xj. doe sit in a place which is called the starre chamber, either because it is full of windowes, or because at the first all the rooffe thereof was decked with images of starres gilted. There is plaints heard of riots. Riot is called in our English terme or speache, where any number is assembled with force to doe any thing : and it had the beginning, because that our being much accustomed either in foreine wars, in Fraunce, Scotland, or Ireland, or being overmuch exercised with civill warres within the Realme (which is the fault that falleth ordinarily amongst bellicous nations) whereby men of warre, Captaines and souldiers become plentifull : which when they have no externe service wherewith to occupie their buisie heads, and handes accustomed to fight and quarell, must needes seeke quarels and contentions amongst themselves, and become so readie to oppresse right among their neighbours, as they were wont before with praise of manhoode, to be in resisting iniurie offered by their enemies. So that our nation used hereunto, and upon that more insolent at home, and not easie to be governed by Lawe and politike order, men of power beginning many fraies, and the stronger by factions and parties offering too much injurie to the weaker, were occasions of making good Lawes. First of retainers, that no man should have above a number in his Liverie or retinue : then of the enquire of routs and riots at everie Sessions, and of the lawe whereby it

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is provided that if any by force or by riot enter upon any possessions, the Justices of the peace shal assemble themselves and remoove the force, and within certain time enquire thereof. And further, because such things are not commonlie done by meane men, but such as be of power and force, and be not to be dealt withal of everie man, nor of meane Gentlemen: if the riot be found and certified to the Kings Counsell, or if otherwise it be complained of, the partie is sent for, and he must appeare in this starre chamber, where seeing (except the presence of the Prince onely) as it were the maiestie of the whole Realme before him, being never so stoute, he will be abashed: and being called to aunswere (as he must come of what degree soever he be) he shall be so charged with such gravitie, with such reason and remonstrance, and of those chiefe personages of Englande, one after an other handeling him on that sort, that what courage soever he hath, his heart will fall to the grounde, and so much the more, when if he make not his aunswere the better, as seldome he can so in open violence, he shalbe commaunded to the Fleete, where he shall be kept in prison in such sort as these Judges shall appoint him, lie there till he be wearie aswell of the restraint of his libertie, as of the great expences, which he must there sustaine, and for a time be forgotten, whiles after long suite of his friendes, he will be glad to be ordered by reason. Sometime as his deserts be, he payeth a great fine to the Prince, besides great costs and dammages to the partie, and yet the matter wherefore he attempteth this riot and violence is remitted to the common lawe. For that is the effect of this Court to bridle such stoute noble men, or Gentlemen which would offer wrong by force to any manner

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men, and cannot be content to demaund or defend the right by order of lawe. This court began long before, but tooke great augmentation and authoritie at that time that Cardinall *Wolsey* Archbishop of Yorke was Chauncellor of Englande, who of some was thought to have first devised the Court, because that he after some intermission by negligence of time, augmented the authoritie of it, which was at that time marvellous necessary to doe, to repress the insolencie of the noble men and gentlemen of the North partes of Englande, who being farre from the King and the seate of iustice made almost as it were an ordinarie warre among themselves, and made their force their Lawe, banding themselves with their tenaunts and servaunts to doe or revenge injurie one against another as they listed. This thing seemed not supportable to the noble prince King *Henrie* the eight: and sending for them one after another to his Court to aunswere before the persons before named, after they had had remonstrance shewed them of their evill demeanor, and beene well disciplined as well by words as by fleeting a while, and thereby their purse and courage somewhat asswaged, they began to range themselves in order, and to understand that they had a Prince who would rule his subjects by his lawes and obedience. Sith that time this court hath beene in more estimation, and is continued to this day in manner as I have saide before.

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Of the Courts of Wards and Liveries.

CHAP. 5.

HE whom we call a ward in Englande, is called in Latine *pupillus*, and in Greeke ὀρφανός. The gardian is called in Latine *tutor*, in Greek ἐπιτροπός. A warde or infant is taken for a childe in base age, whose father is dead. The Romanes made two distinctions *pupillum* & *minorem*, the one to xiiij. yere old, the other was accounted from thence to xxv. And as *pupillus* had *tutorem*, so *minor* had *curatorem* til he came to the age of xxv. These tutors or curators were accountable for the revenues of the pupils minors lands, and great provision and many lawes and orders is made for them in the bookes of the civil Lawe, for rendering just and true accounts. So that to be a gardian or tutor was accounted among them to be a charge or trouble, a thing subject to much encumbrance and small profite, so that diverse meanes were sought for, to excuse men from it. With us this is cleane contrarie, for it is reckoned a profite to have a warde. For the Lorde of whom the warde doeth hold the lande, so soone as by the death of the father the childe falleth warde unto him, he seaseth upon the body of the ward and his landes, of which (so that he doeth nourish the warde,) he taketh the profite without accounts, and beside that offering to his warde covenable mariage without dispergement before the age of xxj. yeres if it be a man, of xiiij. if it be a woman. If the ward refuse to take that mariage, he or she must pay the value of the mariage, which is commonly rated according to the profite of

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his landes. All this while I speake of that which is called in French *garde noble*, that is of such as holde lands of other, by knight service, for that is an other kinde of service which we call in French *gard returier*, we call it gard in socage, that is of such as doe not holde by knight service, but by tenure of the plough. This wardship falleth to him who is next of the kinne, and cannot inherite the land of the warde as the uncle by the mothers side, if the land doe discend by the father, and of the fathers side, if the lande discend by the mother. This gardian is accountable for the revenues and profites of the lande, as the tutor by the civill Lawe to the warde or pupill so soone as he is of full age.

The man is not out of wardshippe by our lawe till xxj. yere olde, from thence he is reckoned of full age, aswell as in the Romane lawes at xxv. The woman at xiiij. is out of warde, for she may have an husband able to doe knightes service say our bookes. And because our wives be in the power (as I shall tell you hereafter) of their husbands, it is no reason, she should be in two diverse gards.

Many men doe esteeme this wardship by knightes service verie unreasonable and unjust, and contrarie to nature, that a Freeman and Gentleman should be bought and solde like an horse or an oxe, and so change gardians as masters and lordes: at whose government not onely his bodie but his landes and his houses should be, to be wasted and spent without accounts, and then to marie at the will of him, who is his naturall Lorde, or his will who hath bought him, to such as he like not peradventure, or else to pay so great a ransome. This is the occasion they say, why many

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gentlemen be so evil brought up touching vertue and learning, and but onely in deintinesse and pleasure: and why they be married very young and before they bee wise, and many times do not greatly love their wives. For when the father is dead, who hath the natural care of his childe, not the mother, nor the unckle, nor the next of kinne, who by all reason would have most naturall care to the bringing up of the infant and *minor*, but the Lorde of whom he holdeth his land in knights service, be it the King or Queene, Duke, Marquesse, or any other, hath the government of his bodie and mariage, or else who that bought him at the first, second or thirde hande. The Prince as having so many, must needes give or sell his wardes away to other, and so he doeth. Other doe but seeke which way they may make most advauntage of him, as of an oxe or other beast. These all (say they,) have no naturall care of the infant, but of their owne gaine, and especially the buyer will not suffer his warde to take any great paines, either in studie, or any other hardenese, least he should be sicke and die, before he hath married his daughter, sister or cousin, for whose sake he bought him: and then all his money which he paide for him should be lost. So he, who had a father, which kept a good house, and had all things in order to maintaine it, shall come to his owne, after he is out of wardshippe, woods decayed, houses fallen downe, stocke wasted and gone, land let fourth and plowed to the baren, and to make amends, shall pay yet one yeres rent for reliefe and sue *ouster le maind*, beside other charges, so that not of manie yeres and peradventure never he shall be able to recover, and come to the estate where his father left it. This as

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it is thought was first graunted upon a great extremitie to King *Henrie* the 3. for a time upon the warre which he had with his Barons, and afterward increased, and multiplied to more and more persons and grievances, and will be the decay of the nobilitie and libertie of England. Other againe say, the warde hath no wrong. For eyther his father purchased the lande, or it did discend unto him from his auncesters with this charge. And because he holdeth by knightes service, which is in armes and defence, seeing that by age he cannot doe that whereto hee is bound by his lande, it is reason he aunswere that profite to the Lorde, whereby he may have as able a man to doe the service. The first knights in Rome, those that were chosen *equites Romani*, had *equum publicum* on which they served, and that was at the charge of widowes and wards, as appeareth by *Titus Livius*, because that those persons could not doe bodilie service to the common wealth. Wherfore this is no newe thing, but thought reasonable in that most wise common wealth, and to the prudent King *Servius Tullius*. As for the education of our common wealth, it was at the first *militaire*, and almost in all things the scope and deseigne thereof is *militaire*. Yet was it thought most like, that noble men, good knights, and great captaines would bring up their wards in their owne feates and vertues, and then mary them into like rase and stocke where they may finde and make friendes, who can better looke to the education or better skill of the bringing up of a gentleman, than he who for his higher nobilitie hath such a one to holde of him by knights service, or would doe it better than he that looketh or may claime such service of his ward, when

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age and yeres will make him able to doe it. That which is saide that this manner of wardship began in the time of King *Henrie* the 3. cannot seeme true. For in Normandie and other places of Fraunce the same order is.

And that statute made in King *Henrie* the thirds time touching wards, to him that will wey it wel, may seeme rather a qualification of that matter, and an argument that the fashion of wardship was long before: but of this matter an other time shall be more convenient to dispute. This may suffice to declare the maner of it.

Of wives and mariages.

CHAP. 6.

THe wives in Englande be as I saide *in potestate maritorum*, not that the husbände hath *vitæ ac necis potestatem*, as the Romans had in the olde time of their children, for that is onely in the power of the Prince, and his lawes, as I have saide before, but that whatsoever they have before mariage, as soone as mariage is solemnished is their husbandes, I meane of money, plate, juelles, cattaile, and generally all moveables. For as for lande and heritage followeth the succession, and is ordered by the Lawe as I shall say heereafter: and what soever they gette after mariage, they get to their husbandes. They neither can give nor sell anie thing either of their husbandes, or their owne. Theirs no moveable thing is by the law of England *constanti matrimonio*, but as *peculium servi aut filij familias*: and yet in moveables at the death of her husbände

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she can claime nothing, but according as hee shall will by his Testament, no more than his sonne can: all the rest is in the disposition of the executors if he die testate. Yet in London and other great cities they have that lawe and custome, that when a man dieth, his goods be divided into three partes. One thirde is employed upon the buriall and the bequestes which the testator maketh in his testament. An other thirde part the wife hath as her right, and the thirde third part is the dewe and right of his children, equally to be divided among them. So that a man there can make testament but of one thirde of his goods: if he die intestate, the funerals deducted the goods be equally divided betweene the wife and the children.

By the common lawe of Englande if a man die intestate, the Ordinarie (which is the Bishoppe by common intendment) sometime the Archdeacon, Dean, or Prebendarie by priviledge and prescription, doeth commit the administration of the goods to the widowe or the child, or next kinsman of the dead, appointing out portions to such as naturally it belongeth unto, and the Ordinarie by common understanding hath such gravitie and discretion as shalbe meete for so absolute an authoritie, for the most part following such division as is used in London, either by thirdes or halfes. Our forefathers newly converted to the Christian faith had such confidence in their pastors and instructours and tooke them to be men of such conscience that they committed that matter to their discretion, and belike at the first they were such as would seeke no private profit to themselves thereby, that being once so ordeined hath still so continued. The abuse which hath followed was in part redressed by certaine actes of

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parliament made in the time of King *Henrie* the eight, touching the probate of testaments committing of administration and mortuaries. But to turne to the matter which we nowe have in hande, the wife is so much in the power of her husband, that not onely her goods by marriage are streight made her husbandes, and she looseth all her administration which she had of them: but also where all English men have name and surname, as the Romans had, *Marcus Tullius, Caius Pompeius, Caius Iulius*, whereof the name is given to us at the font, the surname is the name of the gentilitie and stocke which the sonne doth take of the father alwaies, as the olde Romans did, our daughters so soone as they be married loose the surname of their father, and of the family and stocke whereof they doe come, and take the surname of their husbands, as transplanted from their family into another. So that if my wife was called before *Philippe Wilford* by her owne name and her fathers surname, so soone as she is married to me she is no more called *Philippe Wylford*, but *Philippe Smith*, and so must she write and signe: and as she changeth husbandes, so she chaungeth surnames, called alwaies by the surname of her last husbande. Yet if a woman once marrie a Lorde or a Knight, by which occasion she is called my Ladie with the surname of her husbande, if he die and she take a husbande of a meaner estate by whom she shall not be called Ladie (such is the honour we doe give to women) she shall still be called Ladie with the surname of her first husbande and not of the seconde.

I thinke among the olde Romans those marriages which were made *per coemptionem in manum*, and *per æs and libram* made the wife *in manu & potestate viri*,

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wherof also we had in our olde lawe and ceremonies of mariage, a certaine memorie as a viewe and *vestigium*. For the woman at the Church dore was given of the father or some other man next of her kinne into the handes of the husbände, and he layde downe golde and silver for her upon the booke, as though he did buy her, the priest belike was in steede of *Lipripeus*: our mariages be esteemed perfect by the lawe of England, when they be solemnished in the Church or Chappell, in the presence of the priest and other witnesses. And this only maketh both the husbände and the wife capable of all the benefites which our lawe doth give unto them and their lawefull children. In so much that if I marie the widowe of one lately dead, which at the time of her husbändes death was with childe, if the childe be borne after mariage solemnished with me, this childe shalbe my heire, and is accounted my lawefull sonne, not his whose childe it is in deede, so precisely wee doe take the letter where it is saide, *pater est quem nuptiæ demonstrant*. Those waies and meanes which *Justinian* doth declare to make bastardes to be lawefull children, *muliers* or rather *melieurs* (for such a terme our lawe useth for them which be lawefull children) be of no effect in England, neither the Pope nor Emperour, nor the Prince himselfe never could there legitimate a bastarde to enjoy any benefitte of our lawe, the Parliament hath onely that power.

Although the wife be (as I have written before) *in manu & potestate mariti*, by our lawe yet they be not kept so streit as in mew and with a garde as they be in Italy and Spaine, but have almost as much libertie as in Fraunce, and they have for the most part all the charge of the house and houshoulde (as it may appeare

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by *Aristotle* and *Plato* the wives of the Greekes had in their time) which is in deede the naturall occupation, exercise, office and part of a wife. The husband to meddle with the defence either by lawe or force, and with all foren matters which is the naturall part and office of the man, as I have written before. And although our lawe may seeme somewhat rigorous toward the wives, yet for the most part they can handle their husbandes so well and so doulcely, and specially when their husbandes be sicke: that where the lawe giveth them nothing, their husbandes at their death of their good will give them all. And fewe there be that be not made at the death of their husbandes either sole or chiefe executrixes of his last wil and testament, and have for the most part the governement of the children and their portions: except it be in London, where a peculiar order is taken by the citie much after the fashion of the civill lawe.

All this while I have spoken onely of moveable goods: if the wife be an enheretrix and bring lande with her to the mariage, that lande descendeth to her eldest sonne, or is divided among her daughters. Also the manner is, that the lande which the wife bringeth to the mariage or purchaseth afterwardes, the husbande can not sell nor alienate the same, no not with her consent, nor she her selfe during the mariage, except that she be sole examined by a Judge at the common lawe: and if he have no childe by her and she die, the lande goeth to her next heires at the common lawe: but if in the mariage he have a childe by her, which is heard once to crie, whether the childe live or die, the husbande shall have the usufruite of her landes,

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(that is the profite of them during his life) and that is called the courtisie of Englande.

Likewise if the husbände have any lande either by inheritance descended or purchased and bought, if hee die before the wife, she shall have the usufruitie of one thirde part of his landes. That is, she shall holde the one thirde part of his landes during her life as her dowrie, whether he hath child by her or no. If he hath any children, the rest descendeth streight to the eldest: if he hath none, to the next heire at the common lawe: and if she mislike the division, she shal aske to be indowed of the fairest of his landes to the thirde part.

This which I have written touching mariage and the right in moveables and unmoveables which cometh thereby, is to be understoode by the common law when no private contract is more particularly made. If there be any private pacts, covenants, and contracts made before the mariage betwixt the husbände and the wife, by themselves, by their parents, or their friends, those have force and be kept according to the firmitie and strength in which they are made, And this is ynough of wives and mariage.

Of Children.

CHAP. 7.

Our children be not *in potestate parentum*, as the children of the Romans were: but as soone as they be *puberes*, which we call the age of discretion, before that time nature doth tell they be but as it were *partes parentum*. That which is theirs they may give or sell, and purchase to themselves either lands and

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other moveables the father having nothing to doe therewith. And therefore *emancipatio* is cleane superfluous, we knowe not what it is. Likewise *sui hæredes*, complaints *de inofficioso testamento* or *præteritorum liberorum non emancipatorum* have no effect nor use in our lawe, nor wee have no manner to make lawefull children but by mariage, and therefore we knowe not what is *adoptio* nor *arrogatio*. The testator disposeth in his last will his moveable goods freely as he thinketh meete and convenient without controlement of wife or children. And our testaments for goods moveable be not subject to the ceremonies of the civill lawe, but made with all libertie and freedome, and *iure militari*. Of landes as ye have understoode before, there is difference: for when the owner dieth, his lande descendeth onely to his eldest sonne, all the rest both sonnes and daughters have nothing by the common lawe, but must serve their eldest brother if they will, or make what other shift they can to live: except that the father in life time doe make some conveyance and estates of part of his land, to their use, or els by devise, which word amongst our lawiers doth betoken a testament written, sealed and delivered in the life time of the testator before witness: for without those ceremonies a bequest of landes is not available. But by the common lawe if hee that dieth hath no sonnes but daughters, the lande is equally divided among them, which portion is made by agreement or by lotte. Although as I have saide ordinarily and by the common lawe, the eldest sonne inheriteth all the lands, yet in some countries all the sonnes have equall portion, and that is called *ganelkinde*, and is in many places in Kent. In some places the youngest is sole

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heire: and in some places after an other fashion. But these being but particular customes of certaine places and out of the rule of the common law, doe litle appertain to the disputation of the policie of the whole Realme, and may be infinite. The common wealth is judged by that which is most ordinarily and commonly doone through the whole Realme.

Of Bondage and Bondmen.

CHAP. 8.

AFTER that we have spoken of all the sortes of free men according to the diversitie of their estates and persons, it resteth to say somewhat of bondmen which were called *servi*, which kinde of people and the disposition of them and about them doth occupie the most part of *Justinians* Digestes, and Code. The Romans had two kindes of bondmen, the one which were called *servi*, and they were either which were bought for money, taken in warre, left by succession, or purchased by other kinde and lawefull acquisition, or else borne of their bonde women and called *vernæ*: all those kinde of bondmen be called in our lawe villens in grosse, as ye would say immediatly bonde to the person and his heires. An other they had as appeareth in *Justinians* time, which they called *adscripticij glebæ* or *agri censiti*. These were not bond to the person, but to the mannor or place, and did followe him who had the manors, and in our lawe are called villaines regardants, for because they be as members, or belonging to the manor or place. Neither of the one sort nor of the other have we any number

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in England. And of the first I never knewe any in the realme in my time: of the seconde so fewe there be, that it is not almost worth the speaking. But our lawe doth acknowledge them in both those sortes. Manumission of all kinde of villaines or bondmen in Englande is used and done after diverse sortes, and by other and more light and easie meanes than is prescribed in the civil lawe, and being once manumitted, he is not *libertus manumittentis*, but simply *liber*: howbeit sith our Realme hath received the Christian religion which maketh us all in Christ brethren, and in respect of God and Christ *conservos*, men began to have conscience to hold in captivitie and such extreme bondage him whome they must acknowledge to be his brother, and as we use to terme him Christian, that is who looketh in Christ and by Christ to have equall portion with them in the Gospel and salvation. Upon this scruple, in continuance of time, and by long succession, the holie fathers, Munkes and Friers in their confession, and specially in their extreme and deadly sicknesses, burdened the consciences of them whom they had under their handes: so that temporall men by little and litle by reason of that terror in their conscience, were glad to manumit all their villaines: but the said holie fathers, with the Abbots and Priors, did not in like sort by theirs, for they had also conscience to impoverish and dispoyle the Churches so much as to manumit such as were bond to their Churches, or to the mannors which the Church had gotten, and so kept theirs still. The same did the Bishoppes also till at the last and now of late some Bishoppes to make a peece of money manumitted theirs partly for argent, partly for slaunders, that they

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seemed more cruell than the temporaltie: after the monasteries comming into temporall mens handes have bene occasion that now they be almost all manumitted. The most part of bondmen when they were, yet were not used with us so cruelly nor in that sort as the bondmen at the Romane civill law, as appeareth by their Comedies, nor as in Greece as appeareth by theirs: but they were suffered to enjoy coppieholde lande to gaine and get as other serves that nowe and then their Lordes might fleese them and take a peece of money of them, as in France the Lords doe taile them whom they call their subjectes at their pleasure, and cause them to pay such summes of money as they list to put upon them. I thinke both in France and England the chaunge of religion to a more gentle, humane and more equall sort (as the christian religion is in respectes of the Gentiles) caused this olde kinde of servile servitude and slaverie to be brought into that moderation, for necessitie first to villaines regardants, and after to servitude of landes and tenures, and by litle and litle finding out more civill and gentle meanes and more equall to have that doone which in time of heathenesse servitude or bondage did, they almost extinguished the whole. For although all persons christians be brethren by baptisme in Jesu Christ, and therefore may appeare equally free: yet some were and still might be christianed being bond and serve, and whom as the baptisme did find so it did leave them, for it chaungeth not civill lawes nor compactes amongst men which be not contrarie to Gods lawes, but rather maintaineth them by obedience. Which seeing men of good conscience having that scruple whereof I wrote before, have by

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litle and litle found meanes to have and obtaine the profit of servitude and bondage which gentilitie did use and is used to this day amongst Christians on the one part, and Turkes and Gentiles on the other part, when warre is betwixt them upon those whom they take in battaile. Turkes and Gentilles I call them, which using not our lawe the one beleeveth in one God, the other in many gods, of whom they make Images. For the lawe of Jewes is well ynough knowen, and at this day so farre as I can learne, amongst all people Jewes be holden as it were in a common servitude, and have no rule nor dominion as their own prophesies doe tell that they should not have, after that Christ was promised to them, was of them refused for when they would not acknowledge him obstinatly forsaking their helpe in soule for the life to come and honour in this worlde for the time present, not taking the good tidinges, newes, and evangill brought to them for their disobedience by the great grace of God, and by the promise of the Prophets fructified in us which be Gentils and brought forth this humanitie, gentlenes, honour and godly knowledge which is seen at this present. But to returne to the purpose.

This perswasion I say of Christians not to make nor keepe his brother in Christ, servile, bond and underling for ever unto him, as a beast rather than as a man, and the humanitie which the Christian religion doth teache, hath engendered through Realmes not neere to Turkes and Barbarians, a doubt, a conscience and scruple to have servants and bondmen: yet necessitie on both sides, of the one to have helpe, on the other to have service, hath kept a figure or fashion thereof. So that some would not have bondmen, but

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adscripticij glebæ, and villaines regardant to the ground, to the intent their service might be furnished, and that the countrie being evill, unwholsome, and otherwise barren, should not be desolate. Others afterwarde found out the wayes and meanes, that not the men but the land should be bound and bring with it such bondage and service to him that occupieth it, as to carie the Lordes dung unto the fieldes, to plough his ground at certaine daies, sowe, reape, come to his Court, swear faith unto him, and in the ende to holde the lande but by copie of the Lords court rolle, and at the will of the Lord. This tenure is called also in our lawe, villaine, bonde, or servile tenure: yet to consider more deeply all lande, even that which is called most free lande, hath a bondage annexed unto it, not as naturally the lower ground must suffer and receive the water and filth which falleth from the higher ground, nor such as *Justinian* speaketh of *de servitudinibus prædiorum rusticorum & urbanorum*, but the lande doeth bring a certaine kinde of servitude to the possessor. For no man holdeth land simply free in Englande, but he or she that holdeth the Crowne of Englande: all others holde their land in fee, that is upon a faith or trust, and some service to be doone to another Lorde of a Mannor, as his superior, and he againe of an higher Lorde, till it come to the Prince and him that holdeth the Crowne. So that if a man die, and it be found that he hath land which he holdeth, but of whom no man can tell, this is understoode to be holden of the Crowne, and in capitie, which is much like to knights service, and draweth unto it three services, homage, ward and mariage: That is, he shall swear to be his man, and to be true unto him of

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whom he holdeth the lande. His sonne who holdeth the land after the death of his father, shall be married where it pleaseth the Lorde. He that holdeth the lande most freely of a temporall man (for franke almose and franke mariage hath an other cause and nature) holdeth by fealtie onely, which is, he shall sweare to be true to the Lorde, and doe such service as appertaineth for the land which he holdeth of the Lord. So that all free lande in Englande is holden in fee or *feodo*, which is asmuch to say as in *fide* or *fiducia*: That is, in trust and confidence, that he shall be true to the Lorde of whom he holdeth it, pay such rents, doe such service, and observe such conditions as was annexed to the first donation. Thus all saving the Prince be not *viri domini*, but rather *fiduciarij domini*, and *possessores*: This is a more likely interpretation than that which *Littleton* doeth put in his booke, who saith that *feodum idem est quod hæreditas*, which it doeth betoken in no language. This hapneth many times to them who be of great witte and learning, yet not seene in many tongues, or marketh not the deduction of wordes which time doth alter. *Fides* in Latine the Gothes comming into Italie, and corrupting the language, was turned first into *fede*, and at this day in Italie they wil say *in fide*, *en fede* or *ala fe*. And some uncunning Lawyers that would make a newe barbarous latine worde to betoken lande given *in fidem*, or as the Italian saith in *fede*, or *fe*, made it *in feodum* or *feodum*. The nature of the worde appeareth more evident in those which we call to *fes*, *feoff* or *feoffees*, the one be *fiduciarij possessores*, or *fidei commissarij*, the other is, *dare in fiduciam*, or *fidei commissum*, or more latinely, *fidei committere*. The same *Littleton* was as

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much deceived in withernam, and diverse other olde wordes. This withernam he interpreteth *vetitum navium*, in what language I knowe not: whereas in trueth it is in plaine Dutche and in our olde Saxon language, *wyther nempt, alterum accipere, iterum rapere*, a worde that betokeneth that which in barbarous Latine is called *represalia*, when one taking of me a distresse, which in Latine is called *pignus*, or any other thing, and carying it away out of the jurisdiction wherein I dwell, I take by order of him that hath jurisdiction, an other of him againe or of some other of that jurisdiction, and doe bring it into the jurisdiction wherein I dwell, that by equal wrong I may come to have equall right. The manner of *represalia*, and that we call withernam, is not altogether one: But the nature of them both is as I have described, and the proper signification of the words doe not much differ. But to returne thither where we did digresse: ye see that where the persons be free, and the bodies at full libertie and *maxime ingenui*, yet by annexing a condition to the lande, there is meanes to bring the owners and possessors thereof into a certaine servitude or rather libertinitie: That the tenaunts beside paying the rent accustomed, shal owe to the Lord a certaine faith, duetie, trust, obedience, and (as we terme it) certaine service as *libertus*, or *cliens patrono*: which because it doeth not consist in the persons, for the respect in them doeth not make them bond, but in the lande and occupation thereof, it is more properly expressed in calling the one tenaunt, the other Lord of the fee, than either *libertus* or *cliens* can doe the one, or *patronus* the other: for these wordes touche rather the persons, and the office and duetie betweene them,

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than the possessions. But in our case leaving the possession and lande, all the obligation of servitude and service is gone.

An other kinde of servitude or bondage is used in Englande for the necessitie thereof, which is called apprenticehoode. But this is onely by covenaut, and for a time, and during the time it is *vera servitus*. For whatsoever the apprentice getteth of his owne labour, or of his masters occupation or stocke, he getteth to him whose apprentice he is, he must not lie foorth of his masters doores, he must not occupie any stocke of his owne, nor mary without his masters licence, and he must doe all servile offices about the house, and be obedient to all his masters commaundementes, and shall suffer such correction as his master shall thinke meete, and is at his masters cloathing and nourishing, his master being bounde onely to this which I have saide, and to teach him his occupation, and for that he serveth, some for vij. or viij. yeres, some ix. or x. yeres, as the masters and the friends of the young man shall thinke meete or can agree: altogether (as *Polidore* hath noted) *quasi pro emptitio servo*: nevertheless that neither was the cause of the name apprentice, neither yet doeth the worde betoken that which *Polydore* supposeth, but it is a Frenche worde, and betokeneth a learner or scholer. *Apprendre* in French is to learne, and *apprentise* is as much to say in Frenche (of which tongue we borrowed this worde and many more other) as *discipulus* in Latine: likewise he to whom he is bound, is not called his Lorde but his master, as ye would say his teacher. And the pactions agreed upon, be put in writing, signed and sealed by the parties, and registred for more assurance: without being such an

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apprentice in London, and serving out such a servitude in the same Citie for the number of yeeres agreed upon, by order of the Citie amongst them, no man being never so much borne in London, and of parentes londoners is admitted to be a Citizen or free man of London: the like is used in other great Cities of England. Besides apprentices, others be hired for wages, and be called servaunts or serving men and women throughout the whole Realme, which be not in such bondage as apprentices, but serve for the time for daily ministrie, as *servi* and *ancillæ* did in the time of gentilitie, and be for other matters in libertie as full free men and women.

But all servaunts, labourers and others not maryed, must serve by the yere: and if he be in covenaut, he may not depart out of his service without his masters licence, and he must give his master warning that he will depart one quarter of a yere before the terme of the yere expireth, or else he shalbe compelled to serve out an other yere. And if any young man unmarried be without service, he shalbe compelled to get him a master whom he must serve for that yere, or else he shalbe punished with stockes and whipping as an idle vagabond. And if any man married or unmarried, not having rent or living sufficient to maintaine himselfe, doe live so idely, he is enquired of, and sometime sent to the gaole, sometime otherwise punished as a sturdie vagabond: so much our policie doth abhorre idlenesse. This is one of the chiefe charges of the Justices of peace in everie Shire. It is taken for ungentlenesse and dishonour, and a shewe of enmitie, if any gentleman doe take an other gentlemans servaunt (although his master hath put

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him away) without some certificate from his master eyther by word or writing, that he hath discharged him of his service. That which is spoken of men servaunts, the same is also spoken of women servaunts. So that all youth that hath not sufficient revenues to maintaine it selfe, must needs with us serve, and that after an order as I have written. Thus necessitie and want of bondmen hath made men to use free men as bondmen to all servile services: but yet more liberally and freely, and with a more equalitie and moderation, than in time of gentilitie slaves and bondemen were woont to be used, as I have saide before. This first and latter fashion of temporall servitude, and upon paction is used in such countryes, as have left off the old accustomed maner of servaunts, slaves, bondemen and bondwomen, which was in use before they had received the Christian faith. Some after one sort, and some either more or lesse rigorouslie, according as the nature of the people is enclined, or hath devised amongst themselves for the necessitie of service.

Of the Court which is Spirituall or Ecclesiasticall, and in the booke of Law, Court Christian, or *Curia Christianitatis*.

CHAP. 9.

THE Archbishops and Bishops have a certaine peculiar jurisdiction unto them especially in foure maner of causes: Testamentes and legations, Tythes and mortuaries, mariage and adulterie or fornication, and also of such things as appertaine to

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orders amongst themselves and matters concerning religion. For as it doeth appeare, our auncestors having the common wealth before ordeined and set in frame, when they did agree to receive the true and Christian religion, that which was established before, and concerned externe policie (which their Apostles, Doctors and Preachers did allowe) they helde and kept still with that which they brought in of newe. And those things in keeping whereof they made conscience, they committed to them to be ordered and governed as such things, as of which they had no skill, as to men in whom for the holinesse of their life and good conscience, they had a great and sure confidence. So those matters be ordered in their Courts, and after the fashion and maner of the lawe civil or rather common by citation, libel, *contestationem litis*, examination of witnesses privilie, by exceptions, replications apart and in writing, allegations, matters by sentences given in writing, by appellations from one to an other as well *a gravamine* as *a sententia definitiua*, and so they have other names, as Proctor, Advocates, Assessors, Ordinaries, and Commissaries, &c. farre from the manner of our order in the common lawe of Englande, and from that fashion which I have shewed you before. Wherefore if I say the testament is false and forged, I must sue in the spirituall lawe, so also if I demaunde a legacie: but if I sue the executor or administrator which is he in our lawe, who is in the civill lawe *hæres* or *bonorum mobilium possessor ab intestato*) for a debt which the dead ought me, I must sue in the temporall court. These two courtes the temporall and the spirituall be so divided, that who so ever sueth for any thing to

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Rome or in any spirituall court for that cause or action which may be pleaded in the temporall court of the Realme, by an olde lawe of Englande hee falleth into a *præmunire*, that is hee forfeiteth all his goods to the Prince, and his bodie to remaine in prison during the Princes pleasure: and not that onely, but the Judge, the scribe, the procurer and assessor which receiveth and doth maintaine that usurped pleading doth incur the same daunger. Whether the word *præmunire* doeth betoken that the authoritie and jurisdiction of the realme is provided for before, and defended by that lawe, and therefore it hath that name *præmunire* or *præmuniri*, or because that by that lawe such an attempture hath had warning given before to him of the daunger into which he falleth by such attempt, and then *præmunire* is barbarously written for *præmonere*, *præmoneri*, (as some men have helde opinion) I will not define, the effect is as I have declared: and the lawe was first made in King *Richarde* the secondes time, and is the remedie which is used when the spirituall jurisdiction will goe about to encroch any thing upon the temporall courts, Because this court or forme which is called *curia christianitatis*, is yet taken as appeareth for an externe and forren court, and differreth from the policie and manner of government of the Realme, and is an other court (as appeareth by the act and writ of *præmunire*) than *curia regis aut reginæ*: Yet at this present this court as well as others hath her force, power, authoritie, rule and jurisdiction, from the royall majestie and the crowne of England and from no other forren potentate or power under God, which being granted (as indeede it is true) it may nowe appeare by some reason

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that the first statute of *præmunire* whereof I have spoken, hath nowe no place in Englande, seeing there is no pleading *alibi quam in curia regis ac reginæ*.

I have declared summarily as it were in a chart or mappe, or as *Aristotle* termeth it *ὡς ἐν τύπῳ* the forme and manner of the governement of Englande, and the policie thereof, and sette before your eies the principall pointes wherein it doth differ from the policie or government at this time used in Fraunce, Italie, Spaine, Germanie and all other countries, which doe followe the civill lawe of the Romanes compiled by *Justinian* into his pandects and code: not in that sort as *Plato* made his common wealth, or *Zenophon* his kingdome of Persia, nor as *Syr Thomas More* his *Utopia* being feigned common wealths, such as never was nor never shall be, vaine imaginations, phantasies of Philosophers to occupie the time and to exercise their wittes: but so as Englande standeth and is governed at this day the xxvij of March *Anno* 1565, in the vij yeare of the raigne and administration thereof by the most vertuous and noble Queene *Elizabeth*, daughter to King *Henrie* the eight, and in the one and fiftieth yeere of mine age, when I was ambassador for her majestie in the court of Fraunce, the scepter whereof at that time the noble Prince and of great hope *Charles Maximilian* did holde, having then raignd iij yeares. So that whether I writ true or not, it is easie to be seene with eies (as a man would say) and felt with handes. Wherefore this being as a project or table of a common wealth truely laide before you, not fained by putting a case: let us compare it with common wealthes, which be at this day in *esse*, or doe remaine discribed in true histories, especially in such

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pointes wherein the one differeth from the other, to see who hath taken the righter, truer, and more commodious way to governe the people aswell in warre as in peace. This will be no illiberall occupation for him that is a Philosopher and hath a delight in disputing, nor unprofitable for him who hath to doe and hath good will to serve the Prince and the common wealth in giving counsell for the better administration thereof.

Thomas Smyth.

FINIS.

APPENDIX A.

THE first edition of the *De Republica* appeared in 1583. It was printed by Henry Middleton for Gregory Seton. The second followed in the next year. It is nearly, though not quite, identical with the earlier, the differences, except in the marginalia (see Introd. pp. xliii—xliv), being almost exclusively mere variants in spelling. Even these variations are to some extent explainable when we notice that in the later edition the compositor has made freer use than his predecessor of certain composite double-O's and double-E's, and that this has led him to "full out" his lines with occasional unnecessary mute E's. Thus an earlier "stretes...stretes" has become in 1584 "streets...streetes."

The third edition comes in 1589. The Latin title is now for the first time Englished. The title-page runs as follows. "The Common-Welth of England, and Maner of Government thereof. Compiled by the honorable Sir Thomas Smith, Knight, Doctor of both lawes, and one of the principall Secretaries unto two most worthie Princes, King Edward and Queen Elizabeth: with new additions of the cheefe Courts in England, the offices thereof, and their severall functions, by the sayd Author: Never before published. At London. Imprinted by John Windet for Gregorie Seton, and are to be solde at his shoppe under Aldersgate. 1589."

The title-page of the fourth is similar (though "Common-Wealth" has advanced a step nearer its modern spelling).

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“At London. Printed by Valentine Simmes, for Gregorie Seton, and are to be solde at his shoppe under Aldersgate, 1594.”

These two editions omit the table of contents and make some slight alterations in the marginalia; *e.g.* the sharp rebuke at the end of the note to III. 8.—“Litleton seene in the tongues as Sir Thomas Smith was in Litleton”—is dropped. The “new additions,” which are common to these and the later editions are discussed presently and are printed in this appendix.

The fifth edition replaces “Never before published,” and the following lines, by the words—“Also a Table added thereto, of all the principall matters contained in this Treatise. At London. Printed by James Roberts, for Gregorie Seton, and are to be sold at his shoppe under Aldersgate. Anno Dom. 1601.” The sixth “newly corrected and amended” is also issued at London. “Printed for John Smethwicke, and are to be sold at his shop in S. Dunstanes Church-yard, under the Diall. 1609.”

Then comes the first Latin version. Haddon, the reader will remember, had urged Smith to bring out the book in Latin for the benefit of foreign readers; and Strype twice declares that it was written both in Latin and in English. This however is almost certainly an error, due to Strype's having come across some one of the Latin versions and imagining it to be Smith's own. In these the additional matter of 1589 and later editions is translated, but not the marginal notes, the preface, or the table of contents. The title-page reads as follows. “De Republica et Administratione Anglorum Libri tres: Olim Thomae Smithi, Jureconsulti, Equitis Aurati, Divae quin etiam Elizabethae Reginae ab epistolis et sanctiorib. consiliis operâ confecti: Nunc primum Joannis Buddeni, Legum Doctoris, fide optimâ diligentiaque de sermone Angli-

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cano in Latinum conversi. Pro officina Nortoniana. Londini." There is no date. The British Museum catalogue gives, with a query mark, 1610.

The British Museum also contains three Latin editions issued at Leyden—Elzevirs—1625, 1630 and 1641. That of 1630 is dedicated "Nobilissimo, amplissimo, clarissimo viro, D. Thomae Glenhamo" by "Joannes de Laet, Antwerpianus." The Latin of these is a mere reproduction, without acknowledgment, of Budden's¹ translation.

The Cambridge University Library contains a copy from the seventh edition, of which there is no representative at the British Museum. "Printed by William Stansby for John Smethwicke, and are to be sold at his shop in S. Dunstanes Church-yard under the Dyall. 1612." This edition omits all but a few of the marginal notes.

The eighth, ninth, and tenth English editions, 1621, 1633, and 1635, are also printed by W. Stansby for J. Smethwicke, London; the eleventh, 1640, by R. Young for J. Smethwicke.

A Dutch translation of the three important chapters at the beginning of the second book was published, apparently without any prefatory matter, in 1673, at Amsterdam—*Het Parlement van Engelandt, met het Sitten, en de Macht van het Selvige*. The date is noteworthy. It falls within the period of the aggressive war of 1672—4 which resulted from the secret treaty of Dover between Charles and Louis (the United Provinces were to be conquered and divided between the two conquerors, and Roman Catholicism to be supported by French aid in England). This war Hallam describes as being "so repugnant to English interests, so unwarranted by any provocation, so infamously piratical in its commencement, so ominous of further schemes still more dark and dangerous" that it "finally opened the eyes of all men of integrity." "It was

¹ Budden was professor of civil law at Oxford (see *Dict. Nat. Biog.*).

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accompanied by the shutting up of the exchequer, an avowed bankruptcy at the moment of beginning an expensive war, and by the declaration of indulgence, or suspension of all penal laws in religion, an assertion of prerogative which seemed without limit. These exorbitances were the more scandalous, that they happened during a very long prorogation. Hence the court so lost the confidence of the house of commons, that with all the lavish corruption of the following period, it could never regain a secure majority on any important question." The Dutch had good reason therefore to desire first-hand information as to the relative powers of king and parliament, and we are not surprised to note that other Dutch editions of these chapters followed before the end of the century.

A German edition of the same portion of the work appeared at Hamburg in 1688—*Eigentliche Beschreibung des Parlaments von Engelland, Wie es nehmlich sitzt, und was er vor Gewalt hat*—to which is appended some account of the doings in England in that momentous year. The interest, in this case, was probably more academic in origin than that felt in Holland.

Next we turn to consider the "new additions" to which reference has been made¹. All, except one, of these are of one kind. They are brief descriptions of what we should call the "staffs" of the various courts. Thus in the Chancery are the Chancellor, the Master of the Rolls, Six Masters of the Chancery, the Six Clerks, the Clerk of the Hamper, the Clerks of the Petty Bag and so forth, and about the duties of each of these officers a sentence is written. Mention in the text of the Parliament, the Chancery, King's Bench, Common Pleas, Exchequer, Star Chamber and Court of Wards serves to introduce additions of this character, and accounts of two courts

¹ The remainder of this appendix has been supplied by Professor Maitland.

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which the text had not mentioned, namely, the Court of the Duchy of Lancaster and the Court of Requests, are inserted. The great bulk of the matter thus imported will probably be described by almost all modern readers as highly technical and extremely uninteresting, though a few sentences that are of some value appear sporadically. One of these, which occurs in the account of the Parliament, attracts our eye for more than one reason. The book in its pristine form tells how the Commons choose a Speaker, how they present him to the Prince, how the elect "maketh his excuse of unabilitie," and how the Chancellor in the Prince's name thanks the Commons for choosing so wise, discreet and eloquent a man. In the enlarged book we turn back a page or two and see to our surprise that the Speaker "is commonly appointed by the King or Queen, though accepted by the assent of the House." We will not take upon us to say that in this statement there is no grain of truth, though we believe that it went far beyond the facts, and, to say the least, should not have been made by any one who did not explain that he was disregarding forms and ceremonies. Does it really come from Sir Thomas Smith, from a man who nowhere else shows any tendency to belittle the independence of Parliament, from a man who himself describes the election of a Speaker without hinting that the Prince has a word to say about the matter, or does it come from someone who is more familiar with the courts of law than with Parliament?

The addition to the account of the Star Chamber contains another characteristic passage. It is remarked that the offences of which cognizance is taken by that court are chiefly of statutory origin. And then we are told to "see" 4 and 5 Phil. and Mar. cap. 8, and six other statutes—the latest is 5 Eliz. cap. 7—which are expressly cited, "and all the titles of Riots in Rastals Abridgement." The like of this we nowhere find in

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the original book. Smith mentions a statute now and again, such as Richard II.'s Act of Praemunire and Henry VIII.'s Act condemning poisoners to be boiled, but he never mentions year and chapter. Bookless in France he could not do it, and he did it not after his return. Was he at pains then to make these seven citations about one particular matter?

Also it is to be observed that whereas Sir Thomas writes pleasantly and diffusely, the style of these additions is as curt and bald as style can be. The augmenter of the book gives us technical jargon without a word of explanation. Sir Thomas goes to the other extreme and can hardly use a legal term, however common, without apology and periphrasis. Let us contrast two sentences. "The three Clarks of the Pettie bag are they that receive the offices that are found in the Court of Wards." That is one style. "And if for anie disobedience of not comming and appearing there be a fine (which the latins do call *Mulcta*) set upon any jurors head, the sheriffe is charged with it, and taketh the distresses which in latin be called *Pignora*, and answereth therefore to the exchequer." That is another style. It is a little hard to believe that one and the same author in one and the same book glosses such familiar terms as *finis* and *distresses* and yet leaves without comment such a piece of lawyers' slang as "offices that are found in the Court of Wards." To have told us what "the Latins" would have called an "office" of the sort that could be "found" might have been really instructive¹.

We have said that one addition differs in character from all the rest. It is the first, and we may regard it as an excuse for the others. It forms a chapter interpolated at the beginning of the Second Book. In the First we have been intro-

¹ The term is an instance of tight compression. An office found is the verdict of an inquest taken *ex officio* (Angl. of office) by a royal officer for the ascertainment of the king's rights.

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duced to the various classes of Englishmen. We are going to read of what we should call their institutions and first of the Parliament. Without any display of juristic or philosophic method but with no small literary skill Sir Thomas will then show us the other courts of the realm. But a chapter is here interpolated of a most methodical or methodological kind. It proclaims a method and endeavours to impose it upon the residue of the book. Let us look at it. It is entitled "The division and definition of the Laws of the Realm in General." Substituting some numerals for some brackets, we may say that it begins thus:—"The laws of England consist in two points, (1) Judgment, and (2) Practice. In Judgment are considered (1) Persons, (2) Place, (3) Matter, and (4) Manner. The persons in Judgment are (1) Judges in the Courts, (2) Sergeants and (3) Counsellors. In Practice are considered (1) Persons, and (2) their office. The persons are (1) Protonotaries, (2) Solicitors and (3) Attorneys." Then after a few words about the duties of Protonotaries, Solicitors and Attorneys, we read this:—"The places for Judgment are the Courts where sentence is given and the laws made: as the Parliament, Chancery, King's Bench, the Common Pleas, the Exchequer, the Court of Wards, the Star Chamber, the Court of Requests, and the Duchy Court of Lancaster. The Matter of the Law is (1) Justice and (2) Equity. The Manner of their several proceedings followeth." There the interpolated chapter ends, and then the unquestionable Sir Thomas begins his classical account of the Parliament.

Here indeed is a display of method. We might be reading some notes of an introductory lecture. And a curious method it is. The laws, we are told, consist in two points: (1) Judgment, and (2) Practice. In other words, for the context shows that this is meant, the laws consist in judicial proceedings in which judges, sergeants and counsellors take part, and pre-

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liminary proceedings which are in the hands of protonotaries, attorneys and the like. If we regard this as political theory or jurisprudence, it is very poor stuff; but if we regard it as an apology for what the interpolator is going to do, it is to the point. Whenever Smith mentions a court, a passage is to be introduced which will speak of the staff of that court from the judges down to the attorneys, who it will be remembered, are officers of the court. The little army of cursitors, filacers, clerks of the warrants and clerks of the essoins, clerks of the hamper and clerks of the petty bag is to pass in review, though we shall not be much the wiser when we have read the brief sentences that tell us of their duties. That is why the laws of England consist in (1) Judgment and (2) Practice.

We can imagine a demand for information of this sort. In the days before newspapers and blue books and official almanacs it went some way towards satisfying a reasonable curiosity concerning public officers and their doings. It seemed to lift one corner of a curtain behind which were mysteries. We can imagine someone thinking that Smith's work would be much improved by the insertion of such useful knowledge. We can imagine some clerk of the warrants or clerk of the essoins, some clerk of the hamper or clerk of the petty bag, thinking that the secretary of state had unduly neglected "Practice" and the important functionaries who are concerned therein. What we cannot easily imagine is that Sir Thomas wrote this methodical but jejune chapter and thereby lowered the tone of his whole treatise.

On the whole therefore we feel bound to say that in our judgment the "new additions of the cheefe Courts in England, the officers thereof, and their severall functions" are not, as the title-page declares, "by the sayd author." Apparently they were composed some few years before they were published in the edition of 1589. They suppose that the writs issuing from the

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Courts of King's Bench and Common Pleas are tested respectively by Christopher Wray and James Dyer. This shows that, as they now stand, they could not have been written before November 1574 when Wray became chief justice; and we should infer that they were written before May 1582 when Dyer was succeeded by Anderson. The copy of them which is now to be printed was made from one of the seventeenth century editions, but except as regards spelling and punctuation it reproduces the text of 1589, with which it has been collated.

THE SECOND BOOKE.

CHAP. I.

The division and definition of the Lawes of this Realme in generall.

The Lawes of <i>England</i> consist in two points,	{ Judgment and Practice.
In Judgment are considered the	{ Persons Place Matter, and Manner.
The persons in judgment are the	{ Judges in their Courts Sergeants and Counsellours.
In practice are considered the	{ Persons and their Office.
The persons are,	{ Protonotaries Sollicitors, and Attornies.

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Their office is to prepare the matter, and to make it ready for the Judges to determine.

The Protonotaries are the Clerks in the Court, which doe record the matters hanging in judgement, and do frame the pleading, enter the Rules and Orders of the Court, the Verdicts and Judgements given in the same.

Sollicitors are such as being learned in the Lawes, and informed of their Masters Cause, doe informe and instruct the Counsellors in the same.

Attornies are such as by experience have learned and do know the orders and manner of proceeding in every Court where they serve, and doe purchase out Writs and Processe belonging to their Clients Cause: They see to his Suits, that he be not hindred by negligence: They pay fees belonging to the Courts and prepare the Cause for judgement.

The places for judgement are the Courts where sentence is given and the Lawes made: as the Parliament, Chancery, Kings Bench, the Common Pleas, the Exchequer, the Court of Wards, the Starre Chamber, the Court of Requests, and the Dutchie Court of Lancaster.

The matter of the Law is { Justice
and
Equity.

The manner of their severall proceedings followeth.

[*At the end of Book I. chapter 1.*]

The Judges in Parliament are, the King or Queens Majestie; the Lords Temporall and Spirituall; the Commons, represented by the Knights and Burgesses of every Shire and Borough Towne. These all, or the greater part of them, and that with the consent of the Prince for the time being, must agree to the making of Lawes.

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The Officers in Parliament are, the Speakers, two Clarkes, the one for the Higher House, the other for the Lower; and Committees.

The Speaker is he that doth commend and preferre the Bills exhibited into the Parliament, and is the Mouth of the Parliament. Hee is commonly appointed by the King or Queene, though accepted by the assent of the House.

The Clarkes are the keepers of the Parliament Rolls and Records and of the Statutes made, and have the custodie of the private Statutes not printed.

The Committees are such as either the Lords in the higher House or Burgesses in the Lower House, doe choose to frame the Lawes upon such Bills as are agreed upon, and afterward to bee ratified by the sayde Houses.

[*At the end of Book II. chapter 11.*]

Out of this Court, as from the person of the Prince come all manner of originall Writs. The declaration of writs is at large set downe in the register of writs, and in the *Natura Brevium*: Out of this Court come most commonly Commissions, Patents, Licences, Inquisitions etc.

The Judges of this Court are the Lord Chancellour of England, Assistants, the Masters of the Rols, and six Masters of the Chancery, which are commonly Doctors of the Civil Law.

Officers are the sixe Clarkes of the Chancery, the Clark of the Crowne generall, the Register, Controler of the Seale, two examiners, the clark of the Hamper, the three clarks of the Petty bag, the Cursiters, the Sergeant of the Mace.

The Lord Chancelor is the keeper of the greate Seale, and hath it carried with him wheresoever he goeth.

The Master of the Rols is the keeper of the Records, Judgments and Sentences given in the Court of Chancerie.

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The six Masters are assistants to the Court, to shew what is the equity of the civill Law, and what is conscience.

The Clarke of the Crowne is the chiefe Guardian of all the matters of the Crowne: what are Crowne matters, and Pleas of the Crowne, see in the learned Booke of *Stanford*, called the *Pleas of the Crowne*.

The six Clarks are the Attornies, as well for the Plaintiffe, as Defendant, in every suite in this court.

The Register is the engrosser and keeper of the decrees, publications, orders and injunctions issuing out of this Court.

The two examiners are such as take the examination of the witnesses brought to prove or reprove any thing in suite in this Court, and to put their depositions and answers made to their interrogatories in writing.

The Controler of the Seale is to see and allow of all the Writs made in this court.

The Clarke of the Hamper is hee that doth receive the fines due for every Writ sealed in this court.

The three Clarks of the Pettie bag, are they that receive the Offices that are found in the Court of Wards.

The Cursiters are Clarks appointed to their severall shires which do write original Writs that belong to this court or the common place.

The Sergeant carrieth the Mace before the Lord Chancellor, and is to call any man before him at his commandement.

The Processe in the Chancerie is a Subpœna, which is but to call the partie before him upon a paine, as upon paine of lx. li. etc. And this is the way used to bring in the party, or else by the Sergeant as before.

The punishment is, if the party will not come in, or comming in will not obey the order of the court, imprisonment during the pleasure of the Lord Chancellour.

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The order of proceeding is by Injunctions, Decrees, and orders which are to bind the partie, and if he resist, his punishment is imprisonment.

The matter in this Court are all causes wherein equity and extremitie of Law doe strive and where the rigour of Lawes have no remedy, but conscience and the moderation of *Summum jus* hath sufficient.

And here it is to be noted, that conscience is so regarded in this Court, that the Lawes are not neglected, but they must both joyne and meet in a third, that is, in a moderation of extremity.

This court is called of some *Officina Juris Civilis Anglorum*, because out of this court issue all maner of Processe which give the partie his cause of action in other courts.

[*Two chapters following Book II, chapter 11 and beaded 13 and 14.*]

CHAP. 13.

Of the Kings Bench.

The Kings Bench is the Kings Court, so called because usually the Kings have sitten there, and also because that therein all are causes handled which appertaine to the Crowne: and such causes as wherein the King or Queene is a party, if they properly appertaine not to some other Court.

The Judges of the Kings Bench are the Lord chiefe Justice of England, with other his companions assistant in giving judgement.

The Sergeants and Counsellors doe debate the cause.

The sentence is given by the chiefe Justice, the others all or the most part assenting, as it shall appeare to be in other courts likewise. If they cannot agree, then is the matter referred to a

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demurre in the Exchequer chamber before all the Justices of both the Benches, *viz.* the Kings Bench and the Common Pleas, and the Lord Chiefe Baron of the Exchequer.

The Officers in the Kings Bench are the chiefe Prothonothary, the Secondary, the Clarke of the Crowne, the Clarke of the Exigents, the Clarke of the Papers, the Custos Brevium and Custos Sigilli.

The Prothonothary is he, that recordeth all Judgements, Orders and Rules in this Court, and all Verdicts given, being not of Crowne matters.

The Secondary is the Prothonotharies Deputie, for the said causes, and he is the keeper and maker up of these Records in Bookes.

The Clarke of the Crowne is to frame all Indictments of Felony, Treason, Murther etc. all manner of Appeales, and after to record them and enter the Verdict, and to make and keepe the Records touching these matters.

The Clark of the Exigents is to frame all manner of Processes of *Exigi facias*, which doe issue out of that Court to out-law any man, and to record the out-lawry.

The Clarke of the Papers is hee that keepeth all Rols, Scripts, and pleadings, and other things in writing which are not of Record.

The Custos Brevium is he which fileth all the Writs Judiciall and Originall, after the Sheriffe hath returned them: he is chargeable if any be embeselled or privily conveyed away from the file.

The Custos Sigilli is he, that doth keep the Seale, and seeketh [*corr.* sealeth] all judiciall Writs, and all Patents, Licences issuing out of this Court, and taketh the fee due for them, and thereof is to make his account.

There are certayne Atturnies belonging to this Court in number as the Prothonothorie shall appoynt: those are for

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Plaintiffes and defendants in every cause, and they frame and make the pleadings.

The manner of proceeding in this Court is by Latitat, Arrest, and Bill.

The Latitat is to bring the party in when he is not to be found, or will not appeare and answer.

Arrest is when the party is arrested, and then is driven to finde baile, viz. two sufficient sureties or more as the case shall neede.

By Bill the suite is when the party is in *Custodia Mareschali*, and is from thence brought to answer.

The Matters in this Court are properly all matters of the Crowne, whereof see *Stanfords* booke aforesaide.

In these they proceede by Inditements, verdict, appeale. Improperly all suites wherein the King is a party, or may have any losse. Such are Conspiracies, Champarties, Imbrasier, Maintenance, *Decies tantum*, maymes, Slanders, actions *sur le cas*: of these see *Natura brevium*.

CHAP. 15.

Of the Court of Common Pleas.

The court of Common Pleas is the Kings court, wherein are holden all common pleas betweene Subject and Subject of all matters of common Law: so called, for that it serveth for the exact and precise administration of the common Law.

The Judges in this court are, Lord chiefe Justice of the common Pleas, three other his Associats: The Sergeants at the Law whose number is sometimes more, sometimes lesse, at the pleasure of the Prince. These all are sworne to serve the turne of the common Law at this Barre.

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Two of them are alwayes appointed to serve the Princes turne in what Court soever, and are called the Queenes Sergeants.

The Officers of this Court are the Custos Brevium, three Prothonarhies, the Clarke of the Warrants, the Clarke of the Essoynes, divers Atturnies, Fillisers for every Shire, Exigenter for everie shire, the Clarke of the Juries, the Chirographer for fines, the Clark of the Queenes silver for errours in this Court committed, the Clark of the Seale, as before for the Kings Bench.

The Custos Brevium is the chiefe Clark in the Court, and hee hath the custody of all the Writs whatsoever returnable into this Court, come they in at the day of the returne, or after the day, which is called *post diem*.

The Prothonarhies are they which after the parties have appeared in court, do enter the matter in suite, and make the pleadings, and enter them.

The Fillisers are they which make up all meane processe upon the originall Writs, and the same Writs returned by the Sheriffe, are by the Atturnies delivered to the Custos Brevium to file or string, there to remaine of Record.

The Exigenter are such as make out the Exigents and Writs of Proclamation into every county, where the parties are, that upon the measne Processe or Summons will not appeare.

The Clarke of the Warrants is he which doth take the Warrants of an Atturney, which shall prosecute for the Plaintiffe or Defendant: and is he that enrolleth all deeds acknowledged before the Justices of the same court.

The Clarke of the Essoynes, is he which doth Essoyne the Defendants in every Action, before the day of his appearance.

An Essoyne is an ordinary delay by Office of court in action: and the Officer before whom the Clarke is to take these

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Essoynes, is the punie Justice in the Common Pleas, who for that purpose sitteth three days before the Terme.

The common Attornies are such as are allowed in this court, by the Lord chiefe Justice of the common Pleas and his Assistance to prosecute or defend according to the instructions of their clients for the Plaintiffe or Defendant.

The Clark of the Juries is he that doth make the *Venire Facias*, to the Sheriffe to warne the Juries by.

The Chirographer is he that hath the Writ of covenant with the concord brought unto him, and he maketh Indentures tripartite, wherof two are delivered to the party for whose use the fine is acknowledged, and the third part is reserved with him. And all the Proclamations of the same fine according to the Statutes made, are endorsed on the third part remayning, and it is commonly called the foot of the fine.

The Clarke of the Queenes silver is a distinct Office of the fines, and is he who setteth downe the money that his Majesty is to have for the fine, according to the yeerely value of the Land confessed, knowne, deposed or agreed upon.

All Errours in this court committed, are reformed in the Kings Bench, before the Lord chiefe Justice, and other Justices there assistant by Writ of Errour.

There is also the Clarke of the Out-lawries, who is the Kings Attourney Generall, and he entreth the Out-lawry for the Queene, after the Exigent delivered: and he maketh all the Writs of Out-lawry: and none are to be made but by him.

The matters of the common Pleas are all sutes of common Law commenced by any Writ originall, reall or personal.

Reall are such as touch the inheritance, or fee of any man.

Personall are such as touch transitory things, as goods, chattels, personall wrongs etc.

The difference between a Writ Originall, and a Writ Iudiciall, is this: the original saith in the end of it (in the

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person of the King or Queen) *teste meipso*, or *teste meipso apud Westmonasterium*. The Judiciall Writ saith in the end, *Teste Christophoro Wray*, or *Teste Jacobo Dyer*, or such other as shal be the Lord chiefe Justice of either of those Benches.

The order of processes how they follow the one after the other. In this court is first a *Summoneas* in some Action, then an *Attachias*, but in most a *Capias*, then a *Capias pluries*, then *Exigi facias*, and a Proclamation into the county where the Defendant dwelleth.

The *Summoneas* is the originall, and goeth out of the Chancery, and is directed to the Sheriffe to bring the party by a day.

The Sheriffes order in serving this Writ, is to goe himselfe, or his Bayliffe, to the Land, and there to garnish the party, by sticking up a stick on his Land, which done, the Sheriffe returneth two common pledges, *Johannes Do*, and *Richardus Ro*, and two *Summonees* [*corr.* Summoners], *Richardus Den*, *Henricus Fen*. After the *Summonees* [*corr.* summons], if the party come not in, issueth out an *Attachias* in nature of a precept, to authorize the Sheriffe to go to his Land or House and there to take a pledge for his appearance.

But if the party Plaintiffe meane to out-law the Defendant, he getteth a *Summoneas* out of the Chancery to the Sheriffe to warne the party, who returneth *nihil habet etc.* Then the Plaintiffe getteth a *Capias* to take his body, then an *Alias Capias*, then a *Pluries Capias*, to all which the Sheriffe returneth in order as they bee given out, *non est inventus*; after which if the Party appear not, goeth out to the Sheriffe the *Exigi facias*, and a Proclamation to proclaime the party in five severall County dayes: after which Proclamations, if he do not appeare, he is returned *Quinto exactus et non comparuit et ideo utlagatus*, unlesse hee doe first purchase a *Supersedeas*, to the court to surcease. The *Supersedeas* is granted at the suite of

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the plaintife [*corr.* defendant] to stay the Out-lawrie, and is an appearance to the suite for the Defendant, suggesting to the court, that his Exigent *improvidè emanavit* shewing that the Defendant was alwayes ready to appeare by his Attorney. This done, the Plaintiffe declareth, the Defendant answereth, if the answer be issuable they proceed to tryall.

The manner of proceeding is either to joyne issue, and so to passe to Verdict, or else to Demurre. The tryall is by Verdict, when the question is made *de facto*, as where the matter was done, when, by whom etc.

[*In Book II. chapter 14. The words in square brackets belong to the first editions also.*]

[In English we call them Barons of the Exchequer, whereof is one who is called the chiefe Baron, as *Tribunus* or *Juridicus rationalis primus*, or *princeps*], with others to them assistant: the Chancellor of the Exchequer, two Chamberlaines, and Attorney general. [The chiefe of al is called high Treasurer of England, as you would say in Latine, *Supremus aerarij anglici quaestor* or *Tribunus aerarius maximus.*]

Hee hath the charge and keeping of the King or Queenes treasure, and many Officers are at his sole appointment, and to him accountant, as well in the Tower, Exchequer, as elsewhere; as Auditors in the Mint, Auditors and Tellers in the Exchequer, Receivers etc.

The Chancellour is the under treasurer, and is governour of the court, under the high treasurer. Many Officers also are at his appointment.

The chiefe Baron is the Judge in Law-causes, incident to this court, the three other Barons are assistants.

The Attorney is the Attorney generall, to defend the Queenes right, and to peruse all grants, particulars, suits and

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causes handled in this court. There are common Attorneys besides, which serve for the suiters of this court.

The other Officers are two Remembrancers, two Clarkes of the Pipe, two of the first fruits and tenthes.

The Remembrancers are those which keepe all the Records of the Exchequer betweene the Queene and her subjects and enter the rules and orders there made, the one is for the Prince, the other is for the Lord treasurer.

The Clarkes of the Pipe are those that make leases upon particulars, and receive the Sheriffes accounts; those receive also the bonds and titles of other assurances.

In the Office of the first fruits, are received all first fruits due to her Majesty by Bishops, Deanes, and all Ecclesiasticall Persons, answerable by order of the Law.

Other officers are tellers, Auditors, Collectors, Rent-gatherers, taile-makers etc.

The matters of this court are all penal punishment, as intrusions, alienations without licence, penall forfeitures upon popular actions (a popular action is while the one part is given to the informer; the rest to the Prince). Of these see the whole body of Statutes at large or in Rastalls collection.

In this court are handled all paiments, accounts, expences of the Queenes revenues.

The usuall Processe of this Court is a *Sub poena* out of this court, or a messenger to call the party.

[*At the end of Book III. chapter 4.*]

The Judges of this Court are the Lord Chancellor, the Lord Treasurer, all the Queenes Majesties Council, the Barons of this Land.

The Officers therein are a Clark, three Atturnies, an Examiner.

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[*Two chapters following on Book III. chapter 5.*]

The Dutchie Court.

CHAP. 6.

The Duchie Court of Lancaster is also the Queenes Court of Record. In it are holden all pleas real and personall, which concerne any of the Dutchie Lands, now in her Majesties hands and parcell of her crowne: but severed in Court and jurisdiction.

The Judge in this Court is the Chancelour assisted by the Attourney of the Dutchie for the Queene, the Clarke of the Court, divers Surveyors, two common Attourneies, divers Auditors, two assistants, the Sergeant of her Majestie.

The Chauncelour is a Judge of the Court, to see justice administred betweene her Majestie and her Subjects and betweene party and party.

The Attourney is to maintaine the Queenes right, and is assistant to the Chauncelour, and sheweth him what the law is.

The Clarke keepeth the Roles and Records, and maketh the Processe.

The Surveiors are divers, one more principal: they survey the Queenes lands within the Dutchy.

The Auditors are divers: one more principall, they are to account and make the order of the receipts within the Dutchie.

The common Attourneies are for the suitors that have cause in action within the Court.

The Assistants are two Judges at the Common law that are to aid them in difficult points of the law.

The Sergeant for the Queene, is a learned Counsailor, appointed to be of her Majesties Counsell for her right.

There is also belonging to this Court a Vice-chancelour,

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that serveth for the County Palatine of Lancaster, he maketh all originall processes within his libertie, as doth the Lord Chauncelour of England for the Chauncerie.

The Processe of the County Palatine, is a *Sub pœna*, as in the Chauncerie.

The Court of Requests.

CHAP. 7.

This Court is the Court wherein all sutes made to her Majestie by way of supplication or petition are heard and ended, neither shoulde it holde plea of any other matters then such. And this is called the poore mans Court, because there hee should have right without paying any money: and it is called also the Court of conscience.

The Judges in this Court are the Maisters of Requests, one for the common lawes, the other for the civill lawes.

The Officers in this court, are the Register, the Examinor, three Attorneis, one messenger or Pursuivant.

The Examinor is he that apposeth the witnesses by oath, and recordeth their depositions.

The Attorneis serve for the plaintife and defendant to frame their complaints and answers.

The Pursuivant is an officer in this court, to bring any man before the Judges whom they shall name.

The matters in this Court at this day, are almost all sutes that by colour of equitie or supplication made to the Prince, may be brought before them: properly all poore mens sutes, which are made to her Majestie by supplication.

The Processes in this Court, are a privie seale, proclamation of rebellion.

The nature of these Processes is, as was said before in the Court of Starre-chamber.

APPENDIX B.

The following extracts from Harrison's *Description of England*, Book II. chapter 5, are taken from the first edition of Holinshed's *Chronicles*, 1577. Readers who are interested in the mutual "borrowages" of the two writers will find Dr Furnivall's excellent edition of Harrison's work especially convenient. The earlier and the later readings of Harrison are there given in combination.

"We in England divide our people commonlie into foure sorts, as gentlemen, citizens or burgesses, yeomen, and artificers or laborers. Of gentlemen the first and cheefe (next the king) be the prince, dukes, marquesses, earls, viscounts and barons: and these are called the Nobilitie, they are also named Lordes and noble men, and next to them be Knights and Esquiers, and simple gentlemen. [Cf. Smith I. 16 ad fin.]

The title of prince dooth particularlie belong to the kings eldest sonne, who is called prince of Wales, and is the heire apparent to the crowne; as in France the kings eldest sonne hath the title of Dolphine, and is named peculiarie *Monsieur*. [Cf. Smith I. 18.]

.....
Dukes, marquesses, earles, visconts and barons, either be created of the prince, or come to that honor by being the eldest sonnes or highest in succession to their parents. For the eldest sonne of a duke during his fathers life is an erle, the eldest sonne of an erle is a baron or sometimes a viscont, according as the

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creation is. The creation I call the original donation and condition of the honour given by the prince for the good service doone by the first ancestor, with some advancement, which, with the title of that honour, is alwaies given to him and his heires males onelie. The rest of the sonnes of the nobilitie by the rigor of the law be but esquiers: yet in common speech all dukes and marquesses sonnes, and earles eldest sonnes be called lords, the which name commonlie dooth agree to none of lower degree than barons, yet by law and use these be not esteemed barons. [Cf. Smith l. 17.]

The baronie or degree of lords dooth answer to the degree of senators of Rome and the title of nobilitie (as we use to call it in England) to the Romane *Patricij*. Also in England no man is created baron, except he maie dispend of yearelie revenues so much as maie fullie mainteine and beare out his countenance and port. But viscounts, erles, marquesses, and dukes exceed them according to the proportion of their degree and honour. But though by chance he or his sonne have lesse, yet he keepeth this degree: but if the decaie be excessive and not able to mainteine the honour, as *Senatores Romani* were *moti senatu*: so sometimes they are not admitted to the upper house in the parlement although they keepe the name of lord still, which can not be taken from them upon anie such occasion. [Cf. Smith l. 17.]

.....
Knights be not borne, neither is anie man a knight by succession, no, not the king or prince: but they are made either before the battell, to incourage them the more to adventure and trie their manhood: or after as an advancement for their courage and prowesse alreadie shewed. They are made either by the king himselfe, or by his commission and roiall authoritie given for the same purpose: or by his lieutenant in the warres. This order seemeth to answer in part to that

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which the Romans called *Equitum Romanorum*. For as *Equites Romani* were chosen *Ex censu*, that is according to their substance and riches; so be the knights in England most commonlie according to their yearelie revenues or substance and riches, wherewith to mainteine the estates. Yet all that had *Equestrem censum*, were not chosen to be knights, no more be all made knights in England that may spend a knights lands, but they onelie whome the prince will honour. The number of the knights in Rome was uncerteine: and so it is of knights with us, as at the pleasure of the prince. We call him knight in English that the French calleth *Chevalier*, and the Latins *Equitem*, or *Equestris ordinis virum*. And when any man is made a knight, he kneeling downe is striken of the Prince or his substitute with his sword naked upon the shoulder, the prince etc: saieing, *Soyes chevalier au nom de Dieu*. And when he riseth up the Prince saith *Advances bon chevalier*. This is the maner of dubbing knights at this present, and the tearme (dubbing) is the old tearme for that purpose and not creation.

At the coronation of a king or queene, there be knights made with longer and more curious ceremonies, called "Knights of the bath." But how soever one be dubbed or made knight, his wife is by and by called madame or ladie, so well as the barons wife; he himselfe having added to his name in common appellation this syllable Sir, which is the title whereby we call our knights here in England.

The other order of knighthood in England, and the most honorable is that of the garter, instituted by king Edward the third, who—after he had gained manie notable victories, taken king John of France, and king James of Scotland (and kept them both prisoners in the Tower of London at one time) expelled king Henrie of Castile the bastard out of his realme, and restored *Don Petro* unto it (by the helpe of the prince of Wales and duke of Aquitaine his eldest sonne called the Blacke

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prince) he—then invented this societie of honour, and made a choise out of his owne realme and dominions, and throughout all christendome of the best, most excellent and renowned persons in all vertues and honour, and adorned them with yt to be knights of his order, giving them a garter garnished with gold and pretious stones, to weare dailie on the left leg onlie : also a kirtle, gowne, cloke, chaperon, collar, and other solemne and magnificent apparell, both of stuffe and fashion exquisite and heroicall to weare at high feasts as to so high and princelie an order apperteineth. Of this companie also he and his successors, kings and queenes of England, be the souereignes, and the rest by certeine statutes and lawes amongst themselues be taken as brethren and fellowes in that order, to the number of six and twentie, as I find in a certeine treatise written of the same, an example whereof I have here inserted word for word, as it was delivered unto me, beginning after this maner. [Cf. Smith 1. 18.].....

Esquire (which we call commonlie squire) is a French word, and so much in Latine as *Scutiger vel armiger*, and such are all those which beare armes, or armoires, testimonies of their race from whence they be descended. They were at first costerels or the bearers of the armes of barons, or knights, & thereby being instructed in armes, had that name for a dignitie given to distinguish them from common souldiers when they were together in the field. [Cf. Smith 1. 19.]

Gentlemen be those whome their race and bloud doth make noble and knowne. The Latines call them *Nobiles & generosos*, as the French do *Nobles*. The etymologie of the name expoundeth the efficacie of the word: for as *Gens* in Latine betokeneth the race and surname: so the Romans had *Cornelios, Sergios, Fabios, Aemilios, Julios, Brutos* &c: of which, who were *Agnati*, and therefore kept the name, were also called *Gentiles*, gentlemen of that or that house and race.

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As the King or Queene doth dubbe knights, and createth the Barons and higher degrees, so gentlemen whose ancestours are not known to come in with William Duke of Normandie, do take their beginning in England, after this maner in our tymes. Whosoeuer studieth the lawes of the realme, who so studieth in the Universitie or professeth Physicke and the liberall Sciences, or beside his service in the rowme of a capitaine in the warres, can live ydley and without manuell labour, and therto is able and will beare the port, charge and countenance of a gentleman, he shall be called Master (which is the title that men give to Esquires and Gentlemente) and reputed for a Gentleman, which is so much the lesse to be disalowed, as for that the Prince doth lose nothing by it, the gentleman being so much subject to taxes and publicke payments as is the Yeoman or husbandman, which he also doth beare the gladlyer for the saving of his reputation. Being called to the warres what soever it cost him, he will both arraie & arme himselfe accordinglie, and shew the more manly courage, and all the tokens of the person which he representeth. No man hath hurt by it but himselfe, who peradventure will now and then beare a bigger saile than his boat is able to susteine. [Cf. Smith I. 20, and I. 21.]

Citizens and burgesses have next place to gentlemen, who be those that are free within the cities, and are of some substance to beare office in the same. But these citizens or burgesses are to serve the commonwealth in their cities and boroughs, or in corporat townes where they dwell. And in the common assemblie of the realme to make lawes called the parlement the ancient cities appoint foure, and the boroughs two burgesses to have voices in it, and to give their consent or dissent unto such things as passe or staie there in the name of the citie or borow, for which they are appointed. [Cf. Smith I. 22.]

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Our Yeomen are those which by our lawyers are called *Legales homines*, free men borne English, and may dispend of their owne free land in yearlie revenue, to the summe of fortie shillings sterling. This sort of people have a certeine preheminance, and more estimation than labourers & artificers & commonlie live wealthilie, keepe good houses, and travell to get riches. They are also for the most part farmers to gentlemen & with grasing, frequenting of markets, and keeping of servants (not idle servants as the gentlemen doth, but such as get both their owne and part of their masters living) do come to great welth, in somuch that manie of them are able and doo buie the lands of unthrifite gentlemen, and often setting their sonnes to the schooles, to the universities, and to the Ins of the court; or otherwise leaving them sufficient lands wherupon they may live without labour, doo make their sayde sonnes by that means to become gentlemen: these were they that in times past made all France afraid. And the kings of England in foughten battels, were woont to remaine among them (who were their footmen) as the French kings did amongst their horsemen: the prince thereby shewing where his chiefe strength did consist. [Cf. Smith 1. 23.]

The fourth and last sort of people in England are daie labourers, poor husband men, and some retailers (which have no free land) copie holders, and all artificers, as tailers, shomakers, carpenters, brickmakers, masons &c. As for slaves and bondmen we have none. These therefore have neither voice nor authoritie in the common wealth, but are to be ruled, and not to rule other: yet they are not altogether neglected, for in cities and corporat townes, for default of yeomen, they are faine to make up their inquests of such maner of people. And in villages they are commonlie made churchwardens, sidemen, aleconners, constables, and manie times injoie the name of hedboroughes. This furthermore among other things I have

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to saie of our husbandmen and artificers, that they were never so excellent in their trades as at this present. But as the workemanship of the later sort was never lesse strong and substantiall for continuance and benefit of the buiers. Certes there is nothing that hurteth our artificers more than hast, and a barbarous or slavish desire by ridding their worke to make speedie utterance of their wares: which inforceth them to bungle up and dispatch manie things they care not how so they be out of their hands, whereby the buier is often sore defrauded, and findeth to his cost, that hast maketh wast according to the proverbe.

But to leave these things and proceed with our purpose, and herein (as occasion serveth) generallie to speake of the common-wealth of England, I find that it is governed and maintained by three sorts of persons.

1. The prince, monarch, and head governour, which is called the king, or (if the crowne fall to the woman) the queene: in whose name and by whose authoritie all things are adminstred.

2. The gentlemen, which be divided into two parts, as the baronie or estates of lords (which conteineth barons and all above that degree) and also those that be no lords, as knights, esquiers, & simple gentlemen &c., it shall be inough to have remembred them at this time.

3. The third and last sort is named the yeomanrie, of whom & their sequele, the labourers and artificers, I have said somewhat even now."

[Cf. Smith I. 24.]

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In the collation of the two MSS. no account is taken, as a general rule, of variations in spelling, in punctuation, or in the order of words; of simple changes of conjunctions, prepositions, relatives, demonstratives, or auxiliary verbs (e.g. *and* for *or*, *for* for *from*, *the* for *that*, *do* for *will*); of interchanges of singulars and plurals, present tenses and past; or of omissions and insertions of insignificant words.

In the counting of the lines the chapter headings are not included.

Words enclosed within square brackets are found in one MS. and not in the other. *Sim.* indicates that the two MSS. nearly but not quite verbally agree.

T = Trinity College MS. (1504); H = British Museum MS. (Harleian 1130).

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- p. 9. 1. 3, 4. *Omi.* and speciall, The first, is (T and H).
1. 4. Wher one doth rule (T).
1. 5. *Omi.* the second (T and H).
1. 6. 'Αριστοκρατία and ὀλιγαρχία (T); 'Αριστοκρατία or ὀλιγαρχία (H).
1. 7. dothe reigne caled Δημοκρατία (T); doth rule called Δημοκρατία (H).
1. 8. understood (T); understand (H).
1. 8, 9. supremest or highest (T); supreme and highest (H).
1. 11. *Omi.* and direct (T and H).
1. 12. That which the part that ruleth dothe designe or commande (T); That which that part which doth rule, define or command (H).

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- p. 9. l. 15. And a rule is always understated (H); As a rule is understood (T).
- p. 10. l. 3. Lesbian (T).
 l. 4. *Om.* right (H).
 l. 5. eavery workmans (T and H).
 l. 6, 7. worke streightest (T and H); who goeth streightest to the streightness of yt (T); who goeth moste nighest to the straightnesse of yt (H).
- Heading of chap. 2. *Om.* or government (T).
- p. 10. l. 13. the part that doth beare rule is to be (T).
 l. 15. to be respectively good (T).
 l. 17. that that is just (T and H).
 l. 19. it is not muche out (T); it is not so farre out (H).
 l. 21. profitable and appearance (T and H).
 l. 22. just and right and appearance of right (T and H).
 l. 23. *Om.* and Sovereigne (T and H).
 l. 24-26. the just man may, for his just and true meaning, who would amend (T and H).
 l. 27. doe profit (T and H); For asmuch as (T); For as (H).
- p. 11. l. 2, 3. putt, be by the law justly condemned, yf he be to be condemned and justly so accompted who is condemned for doing contrary (T); *Sim.* H, *but* if he be to be accounted justlye condemned who.
 l. 8. multitude or great (T and H).
 l. 10. another subdivision (T); an other division (H).
 l. 13. cal βασιλεια or kinge (T); cal a kinge or βασιλεια (H).
 l. 15. th' one they call the government of the best ἀριστοκρατιαν (T).
 l. 16. potentiam optimatum (T).
 l. 20. politician (T).
 l. 24. ἀτακτων (H).
- Heading of chap. 4. Examples of changings...governmentes (T).
- p. 12. l. 2, 3. by diversities of tymes all these chainges of rules and government have been seene (T); by diversities of times all these maners of rules or governments hathe beene seene (H).
 l. 3, 4. As in Rep. Romana first there weare kings, as Romulus, Numa, Servius, secondly there were tyrants as Tarquinius, Sylla, Caesar, thirdly there was (T).
 l. 5. best men or ἀριστοκρατια (T).
 l. 6. fourthly the usurping (T).
 l. 8. secession of the Triumvirate (T); secession for the Tribunate (H).
 l. 9. *Om.* manifestly in the (T).
 l. 11. and after in (T and H).

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- p. 12. l. 12, 13. Fifthly was the common wealth and rule of the people as *δημοκρατία* at the time of the expulſing (T).
 l. 14. long tyme after (T); *Om.* was (T).
 l. 15. as ſome will (T and H).
 l. 16, 17. After this was the rule of uſurping of the rascaltye (T).
 l. 18. Scylla his rule (T); Syllas rule (H); Caesars rule (T and H).
 l. 21. Syracuſe, of this hathe Lacedemonea (T); Syracuſe, of this fate Lacedemon (H).
 l. 27. and ſo to decay (T); and ſo decay (H).
- p. 13. l. 3. *Om.* bodie (H).
 l. 5. So then when (T).
 l. 7. rather ſickneſſes of a (T and H).
 l. 8, 9. *Om.* if...eſtate (T).
 l. 11. wrongefull (T).
 l. 15. meanes poſſible (T); to diſſolve and abolish (T and H).
 l. 15. them. Great (T).
 l. 16. courages have [hath] taken one parte and this made Dion (T and H).
 l. 17. *Om.* up (T and H).
 l. 19. and have (T); and hath (H); many common wealthes (H).
- Heading of chap. 6. *Om.* or governements *and* moſt (T).
- p. 14. l. 2, 3. three kinds, and ech of them into two; yet (T).
 l. 3. muſt not thinke (T).
 l. 6. have deviſed (T).
 l. 14. any common wealthe (T and H).
 l. 16. made of the one above named (T and H).
 l. 19. *Om.* perſon (T).
 l. 20. *Om.* that to be the eſtate of (T and H).
- p. 15. l. 1. A tyrant they do define to be he that by force (T).
 l. 4. maketh new (T); *Om.* and conſent (T and H).
 l. 5. wealth of his people (T and H).
 l. 6. advantage and advancement (T).
 l. 10. In one ſorte a man may be (T); in ſorte that one may be (H).
 l. 11. getting of the rule (T and H).
 l. 14. violence to the rule (T and H).
 l. 15. better orderinge (T and H).
 l. 16. although eache after (T and H).
 l. 21. Commodus ſone upon (T); Commodus very ſhortly after (H).
 l. 24. their rule (T and H).
 l. 25. as [all] the good Emperors of Rome after Caesar Octavius and the better Popes of Rome (T and H).
 l. 30. Caesar only (T).

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- p. 16. l. 2. *ἀριστοκρατίαν* (T and H).
 l. 7-9. *Om.* or by...onely (T).
 l. 14. this absolute (T and H).
 l. 21, 22. would use it (T and H).
 l. 22. *νομιμην* (T and H).
 l. 23. regular by lawes (H).
- p. 17. l. 6, 7. woulde not any to be Dictator (T); did not suffer any man
 to keepe the Dictateur (H).
 l. 9. Greekes call (T).
 l. 12, 13. maketh this especially, intreatinge of rulers one kind of
 kings (T); maketh this espece of rulers one kind of kings
 (H).
 l. 15. as such who (T and H).
 l. 16. family (T and H).
 l. 16, 17. *Om.* derived...bodies (H); of their loynes (T).
 l. 18. who absolutely ruled over [upon] (T and H).
 l. 20. rude and ignorant people, one whom (T and H).
 l. 23-25. justice (who...of him) he, I saie, for that (T).
 l. 24. were in manner but (H).
 l. 27. yea almost when (T).
 l. 28. was so highly esteemed that he was takne (T).
- p. 18. l. 3. *Om.* at the first (T and H).
 l. 11. yea some were (T).
 l. 14. Domitian: for these causes that kind (T).
 l. 15. *Om.* at the first (T); *Om.* taken (T).
 l. 16. *Om.* vice of the (T).
 l. 17. he is accompted a tyrant (T).
 l. 25, 26. from whence (H).
 l. 27. kon-ning (T); kunninge (H).
 l. 27, 28. kan or kon (T and H).
 l. 28. betokeneth to end or understand (T).
 l. 28-p. 19, l. 1. *Om.* to know...betokeneth (H).
- p. 19. l. 1. kan or kon (T).
 l. 3. sciens aut prudens homo (T); prudens aut sciens homo (H).
 l. 4. verbe also of the other, as in some places and in the older
 language, I can this (T).
 l. 6. can not understand (T and H).
 l. 13. vanquerer (H).
 l. 17. investiture of the Empire (T and H).
 l. 18. *Om.* or forraine (T and H).
 l. 19, 20. of God himselfe, his people and the sworde of the crowne
 (T); of God and himselfe, his people and sword, the
 crowne (H).
 l. 24. appease the people (T).

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- p. 19. l. 25. consciences of his people (T).
 l. 29. yearly to be payed (T).
 l. 30. act neither approved of (T and H).
 l. 31. accorded by act of (H); accorded by consente of (T).
 l. 32, 33. neither did [H. neither to] bind the king then nor his
 successors people or realme [now] (T and H).
- p. 20. l. 1. Therefor hereafter the better to be understood (T); To be
 better understanded hereafter (H).
 l. 2. an other division (T and H).
 l. 5. *Om.* together (T).
 l. 7. preservation (T); *Om.* as well...warre (T).
 l. 9. abusivè (T and H).
 l. 10. which once paste (T); ech man divideth (H).
 l. 17. communinge (T); commoninge (H).
 l. 21. and som reason (T and H).
 l. 25. mary it is (H).
- p. 21. l. 3. yet that made (H); *Om.* so (H); yet that made not a common
 wealth neither can be so called, because (T).
 l. 4. *Om.* of the husbandman (H).
 l. 5. onely looked for (T and H); or pacte (T); or parte (H).
 l. 7. as Esaie sayth (T).
 l. 9. made me? Now the (T); made? Now the (H).
 l. 12. Lorde, and received and reckoned (T); Lorde and maister,
 received among (H).
 l. 14. but as part (T and H); possession of the goods (T).
 l. 15, 16. other redresse of administration (T).
 l. 24. *Om.* wealth (T and H).
 l. 26. *Om.* Remp. or (T).
- Heading of chap. 11. The first force (T); The first sowrce (H).
- p. 22. l. 4. family for the continuance of societie (T); family for the
 societie or continuance (H).
 l. 7. to defend etc: the woman (T).
 l. 9. labor etc; as for the nurture (T); [a blank space is left in
 H after "labor for"].
 l. 10. it is the charge (?) of them both (T).
 l. 14. *Om.* faire (T).
 l. 15. Ech of them (H).
 l. 21. we be so naturally (T and H).
 l. 23. to say *ἀνθρωπος φύσει ζῶον ἐστὶ μαλλον συνδυαστικον ἢ
 πολιτικον* a man (T and H).
 l. 25. to heard (T and H).
 l. 26. all beasts (H); Of all living creatures man (T).
 l. 27. politike, and [he] cannot [well] (T and H).
 l. 28. *Om.* and fellowship (T).

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- p. 23. l. 1. *Om.* wild (T).
 l. 3. *Om.* in (T); and it is nothing else but a private (T).
 l. 5. ἀριστοκρατία (T and H).
 l. 8. in other thing (T).
 l. 10. greater wit (T); greater courage (T).
 l. 12. to the woman he hath given (T).
 l. 13. to constrain the man (T).
 l. 15. *Om.* two (T).
 l. 17. bonde or freemen, their householde stuffe (T).
 l. 20. marie they cannot yet (H); ἀριστοκρατία (T and H).
 l. 21, 22. μεταφορικῶς (T and H); but in an house (H); and as it
 wear a little sparke of that government civill (T); sparke
 as it were like to that government (H).
 l. 25. *Om.* so that it (T).
 l. 26. *Om.* wel (T); in one house (T and H).
- p. 24. l. 3. children by mariage begin (T).
 l. 5. an other new house (H); familie arisethe (T).
 l. 7. *Om.* and so...another (H); and so by space and time (T).
 l. 11. by their common (T and H).
 l. 14. *Om.* the first and most naturall (T).
 l. 19. or in going about (T); *Om.* or any wise (T).
 l. 20, 21. of whom he had all. And (T and H).
 l. 21. therefore he doth (T); therefore he will (H).
 l. 22. absolute example of a perfect king (T).
 l. 24. of his body (T).
 l. 25, 26. for them all and every one of them: they (T).
 l. 26. than they all or any one of them (H).
 l. 29. causes (T).
 l. 30. coming (T and H).
 l. 31. no vigoure (T); no rigoure (H); every paine (T).
 l. 32. tooke as laide (H); took as put (T).
- p. 25. l. 1. When the great (T).
 l. 2. did first amongst (T).
 l. 3. reverence of any one (T).
 l. 5, 6. amongst whome (H); to the other that they had in him,
 amonge whome (T); it doth amonge brethren (T); it
 fareth amongst brethren (H).
 l. 7. risen: yet notwithstanding (T); *Om.* yet (T).
 l. 8. strangers to them (H); unknowne and strange unto them
 (T).
 l. 12, 13. fayled his yere and time for ignorance (T); fayled this
 yere or time for ignorance (H).
 l. 13-15. in next being wyser of his selfe his brothers fault or error
 he amended. And (T).

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- p. 25. l. 20. families together within themselves (T).
 l. 22. not much differinge (T).
 l. 25. urgent causes and agreed upon som (T and H).
- p. 26. l. 1. wisest and sagest (T).
 l. 5. *Om.* and maintaine (T).
 l. 6, 7. and who shoulde (T and H).
 l. 8. so make them (T).
 l. 12. walshe and barbarous (H); wealphe and barbarous (T).
 l. 14. seemeth to be (T).
 l. 15. *Om.* number (T and H).
- Heading of chap. 14. The first sowrce (H); *Om.* originall or (T); *Om.* rule of the (T).
 l. 19. *Om.* all (T).
 l. 23. eche setteth then merites (T); eche having their merites (H).
 l. 27-p. 27, l. 1. *Om.* such as (H); fewe, for two things for which men that be in societie (T).
- p. 27. l. 1. men who be (H); strive for (T and H).
 l. 2. profite. No (T).
 l. 3. herein (T and H).
 l. 5. to make more magistrate[s] (T and H).
 l. 6, 7. rulers, so that eche man in his turn or els by lot might (T).
 l. 9. commeth by (T).
 l. 10. *Om.* old (H).
 l. 11. *Om.* of birth (T).
 l. 23. who should best governe (T).
 l. 26. for the sowrce (H).
 l. 28. resp: populi (T).
 l. 29. other some *sensum potestatis* (T).
- Heading of chap. 15. ought to be (T); nature of the countrie (T).
- p. 28. l. 2, 3. *Om.* gouvernement in (T).
 l. 4. always arise of tribulations and malice (T).
 l. 8. or eche species or kinde (T).
 l. 9-11. given which agreeth as you would put a garment fitt to a mans body or a shoe fitt to a mans foote so the body [politicke] is in quiet (H and T); profit thereby (H and T).
 l. 12. to a contrary kynde of (T).
 l. 13. is either to greate or to little (T).
 l. 14. doth lett and comber and hurt (T); doth hurt and comber and letteth (H).
 l. 21. Prince or [and] ruler beinge sett at their (T and H).
 l. 22. with insolencie (T and H).
 l. 23, 24. and so scatter (T).

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- p. 28. l. 27, 28. *Om.* as...others (T and H). [H inserts a marginal note—"Graeci, Romanj, Samnites, Vandalj, Dani, Norwegi, Suets." This note reappears in some of the later printed editions (e.g. 1601)—"Graeci, Romani, Samnits, Vandali, Dani, Norwegi, Sueti." Notice that the order in the two cases is the same, and that two names not belonging to the text are inserted. This precludes coincidence.]
- l. 29. we must (T); must ye (H).
- p. 29. l. 7. after his (T and H).
- l. 10. *Om.* part of (T and H).
- l. 12. *Om.* of (T and H); who when (T); chiefest (T).
- l. 13. the chiefe consult (T); the chiefe consulteth (H).
- l. 15. as the Lumbards did (T); as the Lumbards (H).
- l. 17. Swizerds (T); Swiss (H).
- l. 18. cuntry (T); *Om.* yet (T and H); *Om.* else (T and H).
- l. 19. taketh the rule (T and H).
- l. 20. populacie (H); popular sorte (T).
- l. 21. Vicentians [did] at the erection of the cite of Venice (T and H).
- l. 22. *Om.* before (T).
- l. 25. it standeth by (H).
- l. 26, 27. *Om.* the multitude...make (T).
- p. 30. l. 2. *Om.* of the commonwealth and (H).
- l. 3, 4. for they be (T); and as of the goods (T).
- l. 5. And in this (T and H).
- l. 24. base age (T and H).
- l. 26. to meddle (T).
- l. 28. do never want (T).
- l. 29. defaultes (T); defaulte (H).
- l. 31, 32. wealth: and is one this wise (to witt) of them (T).
- l. 32, 33. beare rule and of them (T); office, and which beareth none. Those be called (H); the one be called (T).
- p. 31. l. 1. other private (T and H); Another order was (T); Another was (H).
- l. 2. Romanes caled Patricii (T).
- l. 3. a great while (T); those that were patricii (T and H).
- l. 4. them [those] that were plebei (T and H); rule among[st] them till (T and H).
- l. 5. magistracie was (T); unto them as well as to the other (T and H).
- l. 6. had they (T and H); among[st] (T and H).
- l. 8. δημοτικους (T and H); Frenchemen (T); *Om.* also (T and H).
- l. 9. *le populace* (H).
- l. 10. do commonly divide our men (T).

APPENDIX C.

- p. 31. l. 11. citizens or burgesses (T and H).
 Heading of chap. 17. Of the parts [parties] of the commonwelthe of Englande (T and H); *Om.* called...maior (T and H).
 l. 20. or highest in (T and H).
 l. 21, 22. For a Dukes eldest sonne (T).
 l. 22. *Om.* called (T and H).
 l. 23. *Om.* is...of (T and H).
 l. 23, 24. a viscounts son a barron (T); *Om.* else (H).
 l. 26, 27. the good service and advauncement (T and H).
- p. 32. l. 6. and Erles sonnes (T and H); *Om.* and...earle (T and H).
 l. 7. *Om.* which (H).
 l. 8-10. barrons, yet by law and use they be esteemed barons, The (H).
 l. 11. degree of the Senators (T).
 l. 11, 12. title of nobilitie as we use to call in Englande to *patricii* (T and H),
 l. 13. *filios*, afterwards they were called *clarissimi* (T and H).
 l. 15, 16. in yearly valew (T).
 l. 20, 21. the decay be excessive (T and H); *Om.* be (T and H).
 l. 22. *moti* (H); *remoti* (T).
- Heading of chap. 18. *Om.* may (T),
 l. 27. which name (T and H); *Om.* of prince (H).
- p. 33. l. 4. *Om.* he or (T).
 l. 5. mon Seigniour (T).
 l. 6. a Prince (T).
 l. 7. none ar borne (T).
 l. 8. *Om.* the more (T).
 l. 9. after for advauncement (T); after as an advauncement (H).
 l. 10. *Om.* and manhood (T).
 l. 12. for the vertues (T and H).
 l. 20. *Om.* and ours (T).
 l. 21. *Om.* in all pointes (T).
 l. 22. *Om.* any (T).
 l. 23. doth agree with (H); al commonwelthes change (T).
 l. 25. diversities of times do give present (H).
 l. 28. wherwith (T).
 l. 29-31. *Om.* chosen (T); *Om.* according...commonly (H).
- p. 34. l. 2. spende (T and H); *Om.* or fee (T and H).
 l. 3. Prince (T); *Om.* so (T and H); *Equites* is (T).
 l. 4. *Om.* it (T and H); knightes, for it is at (T).
 l. 6-7. [findeth] his own horse himselfe (T and H); as in the time of peace (T).

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- p. 34. l. 7-8. *Om.* and...warres (T and H).
 l. 10. times and at a (T); times at (H); *Om.* but in Englande (T and H).
 l. 11-12. *gap in MS. between may and by* (H).
 l. 13. prince or at the (T).
 l. 14. at the making (T and H).
 l. 16. take the honour of a knight (T).
 l. 18. had rather do. (H and T).
 l. 20. that abilitie (H); that authoritie (T).
 l. 25. valew (T).
 l. 30. in Englishe (H).
 l. 33. In making (T and H).
 p. 35. l. 6. *Om.* house (T).
 l. 8, 9. we shall speake (T and H). Now whereupon (T).
 l. 10, 11. more than *miles* (T).
 l. 12. *Om.* might...question (T and H).
 l. 13. *Om.* rather (T).
 l. 14. wagior (?) (H).
 l. 16. solduros (T and H); *Om.* men (T).
 l. 22. oth, execration or (T and H).
 l. 24. Lands knights (H).
 l. 25. land (H).
 l. 25, 26. although now they (T); *Om.* at this day (H); *Om.* for... hirelings (T).
 p. 36. l. 2, 3. Frenchmen call (T); or *hominem equestris* (T).
 l. 8. sous chevallier (T); the tyme (H).
 l. 9. and [then] when he riseth (T and H).
 l. 10. advaunces (T); avaunces (H).
 l. 14. longer (T and H).
 l. 18. *Om.* in common appellation (T).
 l. 20. after (T).
 l. 27. had [had] manie,noble (T and H).
 l. 28. *Om.* being (H).
 l. 32. prince, his eldest sonne (T and H).
 p. 37. l. 3. in all vertues (T and H).
 l. 4. honourable title (T).
 l. 5. enorned with golde (T and H).
 l. 6. *Om.* of gold (T).
 l. 12. Englande be the heade (T and H).
 l. 19. *senngerum* (?) (T).
 l. 20. *Om.* which beare armes (T).
 l. 21. *armeros* (T).
 l. 22. which do beare a buckler or som other thinge as a testimonie (T).

APPENDIX C.

- p. 38. l. 2. and [by] that being taught in armes had that name (T and H).
 l. 8. *Om.* all (T); calleth all them now (H).
 l. 10. to be honour (T).
 l. 11. for his vertues (T and H); few (H).
 l. 15. riches (T).
 l. 17. *Om.* within (T).
 l. 19, 20. *Om.* *Gens...* surname (T).
 l. 20, 21. *Sergios, Claudios, Fabios* (T).
 l. 22. of which som were (T).
 l. 23. gentile (T); being [yet] remaining (T and H).
 l. 28. olde stocke (T); olde smoke (H).
- p. 39. l. 2. be misliked (T); *Om.* Thus the (T and H).
 l. 3. had ever such adoe with such men (T); those men (H).
 l. 3-7. *Om.* those...Achilles (T).
 l. 6, 7. *Aeacidae, Thersitae* (H).
 l. 8. But all other (T).
 l. 9. *Om.* that is (T and H).
 l. 10. is to have it (T); and as vertue (T and H).
 l. 11. obtained for the example (H); maintained for the example (T).
 l. 12-16. progenitors, for the abilitie to give to their race better education and bringing up for the enraced love of [the] tenants and [or] neighbours to such noblemen [and gentlemen of whom they holde and by whom they] doe dwell. (H and T).
 l. 16, 17. *Om.* which...steps (T and H).
 l. 24. *Om.* so...prince (T and H).
 l. 27. merit to deserve (T and H).
 l. 29. doth make but (T and H).
 l. 30. them barons (T); the barons (H).
- p. 40. l. 6. which is commonly saide (T); that is saide (H); *fuervis* (T and H).
 l. 8-12. which the tytle shall beare that the said Heralde hath perused and seene ould regesters (T); past have borne the same (T); which the title shall beare that the said Herauld in tyme past had borne the same (H).
 l. 14. *Om.* of that man (T).
 l. 15, 16. *Om.* for sundrie (T and H); which he hath done by the authoritie (T and H).
 l. 17. in armes (T); he giveth (T and H).
 l. 18. *Om.* being (T and H).
 l. 19. an esquier (T and H).
 l. 20. Thes men (T and H).

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- p. 41. l. 1. no, in any (H).
 l. 4. *Om.* and keepe (T).
 l. 5. every shew (T); peculiar (T).
 l. 6. wide (H).
 l. 8. so much diminish (T and H); *Om.* As (T and H); For other outward respecte (T).
 l. 9. counted (H).
 l. 13. arme himself accordinglie (H).
 l. 14. *Om.* also (T and H); manlyke (T).
 l. 15. higher courage (H).
 l. 16. more liberalitie (H); more liberall (T).
 l. 17. idle men (T and H).
 l. 19. *Om.* hereby per chance (T and H).
 l. 20. he himself (T); As for (T); For as for (H).
 l. 22. such that have to do in it (T).
 l. 24. *Om.* are to (T and H).
 l. 25. appointed thereunto (T); *Om.* persons (T and H).
- p. 42. l. 4. no (T and H).
 l. 5. *Om.* save (H).
 l. 6. which be called in (T).
 l. 7. iiij. the borough (T).
 l. 8. *Om.* to give (T).
 l. 9, 10. *Om.* for...appointed (T and H).
 l. 16. *hominem*, this name is known and familiar (T).
 l. 17, 18. to writtes (T and H); which is an Englishe man freeman borne who may (T).
 l. 21, 22. v-vi (H); at this daye (T).
 l. 24. *Om.* yet (T).
 l. 27. keeping (T).
 l. 28. to gett (T and H).
 l. 29. and with (T and H).
- p. 43. l. 1, 2. idle servants (H); idle ones as do gentlemen (T); *Om.* both (T).
 l. 3. they do arise (T).
 l. 6. schooles to (H); schooles at (T).
 l. 16. as for distinction as (H); and for distinction thus (T).
 l. 19. thus John (T); esquier, if he be not esquier John Finche Gentleman (T and H).
 l. 22. and ar to be (T); *Om.* number of the (T).
 l. 24. and such [beinge] the lowest (T and H).
 l. 25. be to be (H); *Om.* the number of (T).
 l. 26. populacie (H); popular sorte (T).
 l. 31. πολλά μέσσιον ἀρετα (T and H).
- p. 44. l. 1. delivered of yt (T and H).

APPENDIX C.

- p. 44. l. 3. *Om.* yet (T and H).
 l. 4. wisheth (T).
 l. 5. uppon their owne (T); at their owne (H).
 l. 6. they have their (T and H).
 l. 10. hym and his (H).
 l. 11, 12. who hathe adventured his (H); for and with (T).
 l. 16. *Om.* so...call (T).
 l. 18. Lorde, I meane, (T and H).
 l. 19. for otherwise (T).
 l. 20. nor ever (T); making any (T).
 l. 28. kynde of cowardlines (T).
 l. 29. they had or helde (T).
 l. 30. as from (T).
 l. 32. yeomanry (H); England joyned together might go through
 the worlde (T); *Om.* are renowned (H).
- p. 45. l. 1. and we always (T); as we always (H).
 l. 7. remained (T and H).
 l. 10. *Om.* shew (T); his chiefe strength (T and H).
 l. 13. as young men [man] (T and H).
 l. 14. any man yeoman untill (T).
 l. 16. Yonger (T).
 l. 17. Possibly (T and H).
 l. 18. to call (T).
 l. 20. some lowe (H); they hearde that name by frequentation
 used of the lowe (T).
 l. 21. *Om.* yet (H).
 l. 22-24. and being so called amonge them to be counted smale
 gentlemen or younger men; they calling in the warre by
 mocking or sporte one an other when they come home
 used still this name younger man (T); *Om.* to be (H);
 they calling (H); mocking (H); sport on an other (H).
 l. 27. howsoever (T).
 l. 28. yonger (T); yonge (T).
- p. 46. l. 2, 3. *censi plegarii* (?) or *operarii* (T).
 l. 4. marchantes retayners (T).
 l. 11, 12. yeomen, they are fayne to make their inquestes of such
 (T and H).
 l. 19, 20. maintained (T); maimed (?) (H); sortes and manner (H);
 Monarchi or (T).
 l. 23. The second sorte is the (T).
 l. 24. two sorte (T).
 l. 25. which contayneth (T and H).
- p. 47. l. 1. simple (T and H).
 l. 5. officers (T); *Om.* and collection of (T and H).

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- p. 48. l. 1. *Om.* of the realme (T).
 l. 2. is the Parliament (T); is in the Parliament (H).
 l. 4. gentrie (H).
 l. 5. there is (T and H).
 l. 8. nobilitie and Lordes (T and H).
 l. 15. parties must eache appeare and after that (T); apart (H).
 l. 17. unto it and alloweth it (T).
 l. 19, 20. apply himselfe to defend and obey it (T).
- p. 49. l. 8. defineth out (T).
 l. 25. sendeth out (H); prescripts (T).
 l. 29. from the day (T).
- p. 50. l. 1. *Om.* at the least (T).
 l. 2, 3. admonish every shire (T).
 l. 4-6. *Om.* to heare...shire (T).
 l. 6. all upon that day (T).
 l. 7. ancient (H).
 l. 9. *Om.* there (H); may be ther present the first (T).
 l. 11. who are present (T).
 l. 12. appointed (T); voice of the (T and H).
 l. 13. is counted (T); yoman I call him (T).
 l. 16, 17. the most voices (T).
 l. 18. likewise also (T).
 l. 22. hie house (H); T *illeg.*
 l. 26, 27. as his proctour and (T); a voice for him (T).
- p. 51. l. 1. place whereby (T).
 l. 5. side of that house (H).
 l. 11. of any doubt that ariseth (T).
 l. 14, 15. who give [geve] their consent (T and H); *Om.* is given (T and H); every man (T).
 l. 16. *Om.* severally (T).
 l. 17. proxies or letters for (T).
 l. 18. onely thus (T).
 l. 23. number of three or fower (T).
 l. 25. *Om.* or chamber (T).
 l. 26. declaring also (T).
 l. 31. comming altogether (T).
- p. 52. l. 1, 2. *Om.* the commons (T); chancellor againe (T).
 l. 7, 8. requireth (T and H); of the prince (T and H).
 l. 11. Secondly that without offence of his majestie (T).
 l. 12, 13. *Om.* in disputing (T).
 l. 14. *Om.* and...Majestie (T).
 l. 16-18. him, that they which wear called to his hignes courte mighte (T); *Om.* themselves (H).
 l. 23. might have (T).

APPENDIX C.

- p. 52. l. 24, 25. he will not abuse those that have (T).
 l. 28, 29. done the first day (T).
 l. 33. *Om.* house (T).
- p. 53. l. 2. either with (T).
 l. 6. reasonably (T).
 l. 8. dispute (H).
 l. 12. *Om.* againe (T).
 l. 14. *Om.* and...question (H).
 l. 16. *Om.* here (T).
 l. 17, 18. you contented (T); And yfe the non contents be more than the contents (T).
 l. 19. antiquated (T and H); Now if (T).
 l. 24, 25. asketh by (T); sayinge (T).
 l. 29, 30. *Om.* and so...actes (T).
- p. 54. l. 1. *Om.* busie (T).
 l. 3. moe, if they will have one of them read (T); redd (H).
 l. 4. lowest (T).
 l. 5. *Om.* seate or (T); for the nonce (T and H).
 l. 8. *Om.* first (T).
 l. 9. *Om.* point (T and H).
 l. 13. sundry dayes (T).
 l. 15. observed (T).
 l. 19. *Om.* yet (T).
 l. 23. whom he dothe (H).
 l. 24, 25. as thus he (T); will the bill and gave this and this reason doth not satisfie but I am of the contrary opinion for this and this reason (T).
 l. 24. spake (H).
 l. 26. *ins. ad fin.* doth not satisfie, but I am of the contrarie opinion for this and this reason (H).
 l. 29. replie againe (T).
 l. 31. *Om.* in that house (T).
 l. 32. all the whole time (T).
- p. 55. l. 5. but also (T).
 l. 10. moste sweet (T); moste doulce (H).
 l. 12, 13. may. Ordinarily (H); time, at (H).
 l. 13. or haste (T).
 l. 20, 21. upon by the reader they subscribe thus (T).
 l. 21. *sout* (T).
 l. 23. downe againe (T).
 l. 24. *sont* (T).
 l. 27. understood (H).
 l. 28. then sometimes (T).
 l. 29. *Om.* that a (T).

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- p. 56. l. 1. consent (T).
 l. 2. *Om.* ech man (T).
 l. 4. if (T and H).
 l. 10. lower (T).
 l. 14. thrise (T).
 l. 17. if he (T).
 l. 18. thus up the bill (T).
 l. 23. And if it be doubted (T).
 l. 26-28. *Om.* So...part (H).
 l. 32, 33. certaine committed commonly of them (T).
- p. 57. l. 4. these committed (T).
 l. 11. before sayde (H).
 l. 14. in his seate and all (H).
 l. 15. seates (T and H).
 l. 17. *Om.* there (T); thanksgivinge (T).
 l. 18. *Om.* &c (T); and then in (T).
 l. 27. shall be (T and H), and then (T).
 l. 28-30. sayth that the prince hath well viewed and weighed what
 [the things which] hath [have] been moved and presented
 [represented] and debated amongst the Lords and them
 [then], and thereupon [therefor] will shew his mynde
 that their doings might have perfect life [lighte] (H
 and T).
 l. 31. they may have (T).
 l. 33. season (T).
- p. 58. l. 1. *Om.* &c (T).
 l. 7. *Om.* benefit or (T).
 l. 12. *sadvise* (T and H); counted (T and H).
 l. 13. none (T and H).
 l. 16. all other (H); have spokne (T).
 l. 17, 18. and by none (T); forcible (T); make the forfaiture (T
 and H).
 l. 19. man anewe (T); man of new (H); law made (T and H).
 l. 20. *Om.* saide (T); saide partyes (H).
- Heading of chap. 3. Monarchie (T).
 l. 23. Monarchie (T).
- p. 59. l. 2. only with the advice (T).
 l. 9, 10. participate his mynde (T); as many as (T).
 l. 10. *Om.* shall (T); concerning such (T).
 l. 11. foren nations or Princes (T).
 l. 13. ambassages (T).
 l. 22. or any other deadly (T).
 l. 26. sudden warre in open (T).
 l. 33. *Om.* all (T).

APPENDIX C.

- p. 60. l. 9. decryinge (H); of the monies (T).
 l. 13. the princes pleasure and discretion (T).
 l. 15. for the coine (H and T).
 l. 26, 27. there was ever (T and H); betwixt (T and H).
 l. 29, 30. "booke of Monies" (T).
 l. 32. *Om.* by the Parliament (T).
- p. 61. l. 3. for paynes of (T).
 l. 5. whereas (T); *Om.* the forfaite (H).
 l. 6. the one parte is to (T); is to (T).
 l. 11. abolicion (H); *stat* (T).
 l. 13. But notwithstanding (T and H).
 l. 22. *Om.* certaine (T).
 l. 24. excitations (T).
 l. 27. hath hurte (?) or (T).
 l. 30. of any parte of a man (T and H).
 l. 31. *Om.* in the name (T).
- p. 62. l. 3. halte (T); justiciars (H).
 l. 4. and so L: Marquesse (T).
 l. 9. landes one (T).
 l. 10. fooles, naturalls, (T).
 l. 11. madd (T and H); continue, especially (T and H).
 l. 14. have growne (T and H).
 l. 16, 17. who can take (T and H); *with inverted commas* "who... hand" (T).
 l. 17, 18. and if it were governed as it might be (whether it be or not let [left] others [other men] judge) there is not so much (H and T).
 l. 23. of the Lawes and Lawyers (T and H).
- p. 63. l. 1, 2. understood of them of the realme (H).
 Heading of chap. 4. wherein our (T); others (T).
 l. 8. which is as much to say [as] (T and H).
 l. 15, 16. where (T and H); common wealthes ar most (T).
 l. 17. first (T); 1. (H).
 l. 18. secondly (T); 2. (H).
 l. 20. thirdly (T); 3. (H).
 l. 22, 23. fourthly (T); 4. (H); electinge chief (T).
 l. 26. *Om.* himselfe (T).
- p. 64. Heading of chap. 5. manner of trialles (T); fashions of triall (H).
 l. 6. maner (T and H; also *ed.* 1584).
 l. 7. betwixt...betwixt (T and H).
 l. 12, 13. and the last day allowed by (T).
 l. 16. intromell (?) (H).
- Heading of chap. 7. Triall or (T).
- p. 65. l. 7. *Om.* ever (T).

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- p. 65. l. 9. thus described (T and H). H leaves a space after *Briton* as if for the description.
- l. 10. The other two (T and H).
- l. 14. *Om.* either (T).
- l. 20. *Om.* them (H); we call in our language (T).
- l. 27. mary we call (T and H).
- p. 66. l. 2. *Om.* necessarily (T).
- l. 3. pleader (T and H).
- l. 5. if he proceed (T).
- l. 5-7. we call him appealer. The other (T).
- l. 6. appealer or appealor (H).
- l. 8. we call him prisoner (T).
- l. 11. *Judex* also (H).
- l. 20. evil demeanure (T).
- l. 25. ar deprived (T); is dispoyled (H).
- p. 67. l. 14. for himselfe (T and H).
- l. 22, 23. possessorie, to aske one to keepe (T).
- l. 27. call (T).
- l. 33. of the kings (T).
- p. 68. Heading of chap. 10. tribunall benches (T).
- l. 5. straight after (T and H); *Om.* thing (T).
- l. 11. the Tribunals (T).
- l. 14. to be hearde and pleaded, especially (T).
- l. 20. and other men (T); *Om.* called (T).
- l. 21, 22. *Om.* they (T); may be called (T).
- p. 69. l. 5, 6. wher judgment is exercised the one (T and H).
- l. 7, 8. and the other in all civill (T and H); *Om.* then (T and H).
- l. 12. *Om.* no (H).
- l. 17, 18. which was *Justitium* (H); justicia (T).
- l. 20, 21. *Om.* ten daies during (T); *Om.* at the least (T); from [blank in MS.] about v or vi weeks (H).
- l. 21, 22. After Christmas from [blank in MS.] till about three (H); after Christmas till about three (T).
- l. 23, 24. 8 dayes after Easter to about XIX or XX dayes (T).
- l. 23-26. Then after easter from viii dayes after day after Trinity Sunday till about three weeks more. All (H).
- l. 24-26. Likewise the 8th day after Trinitie sunday till about three weeks more. All (T).
- p. 70. l. 4. pleade yt (T and H); *Om.* but unto that (T and H); I meane (T).
- l. 10. with more ease (T).
- l. 16. of those that (T).
- l. 17. have so much (T).
- l. 22. contented (T).

APPENDIX C.

- p. 70. l. 25, 26. attornies and sergeantes [at the lawe] (T and H).
 l. 30. and those other (H); it made (H); Those other by his
 judgment is made no (T).
 l. 31. they had (T); injustice they had (H).
 l. 32. thus I (H).
- p. 71. l. 1, 2. ἀκριβοδικαίων (H); ἀκριβοδικας (?) (T).
 l. 7. exactions (T).
 l. 8, 9. dolis (?) (T); *Om.* mali (T).
 l. 13. ancient law (T).
 l. 15. *Om.* wherein he is (T).
 l. 15, 16. hath this as in the solemne forme (T and H).
 l. 16-20. T places "And...appertaine" within inverted commas.
 l. 17. cause (T).
 l. 23. constrained (T); by no rigour nor (H).
 l. 26. usuall forme of pleading and properties (T); usuall form of
 pleading and proper (H).
- p. 72. l. 2. in the law (T and H).
 l. 4, 5. *Om.* two (T and H); exercise, whereof two (T and H).
 l. 8. number of [blank in MSS.] (T and H).
 l. 9. These hath (H); These had (T); one ordinarilie for a
 stypend (T).
 l. 10. *ins.* the two, the chiefe, th' one to the somme of [pds.]
 [blank in MSS.] the other to the som of [blank] the
 rest [pds.] [blank] a peece (T and H).
 l. 23. *Om.* remaineth (H); strife as a matter helde (T).
 l. 24. can issue out and be voided (T and H).
 l. 27. *Om.* our (T).
- p. 73. l. 4. that fashion (T and H); which is called (T and H).
 l. 5. demurr (T); *Om.* where (T and H); cause (T).
 l. 6. to be doubtfull (T); this is (T and H).
 l. 7. cause (T).
 l. 9. *Om.* helde for (H); holden for (T).
 l. 10. and [the] lande (T and H).
 l. 11. anie parte (T).
 l. 14. no more (T); but still (T).
 l. 18. So that in that case (T and H).
 l. 19, 20. doubtfull that it is ended, that in the answere (T and H).
 l. 21, 22. triplication etc [and so forth], the matter is concluded in
 the pleadinge (if th' exception be not vaylable) the Judge
 out of hand deciding. And (T and H).
 l. 22, 23. must graunte (T and H).
 l. 28. former etc. (H).
- p. 74. l. 1, 2. *Om.* or barre the partie (T and H).
 l. 3. prove it (T and H).

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- p. 74. l. 4. issue; streighte all (H); and the question (T).
 l. 8. the one or the other (H).
 l. 9, 10. civill lawes manner (T).
 l. 14. thear the Sergeantes (T).
 l. 15. *Om.* before the Judges (T).
 l. 16. *Om.* determine (T).
 l. 19. *Om.* of the one partie (T).
 l. 21. either wonne (T).
 l. 22. have any (H).
 l. 29. and all the rest (H); shall serve (T).
- p. 75. l. 2. *Om.* as this (T).
 l. 6. easye to understand (H).
 l. 7. peradventure make judgment contrarie (T and H).
 l. 13. at large (T).
- Heading of chap. 14. *Om.* court of (T and H).
 l. 20. officers as [several lines left blank] (H).
 l. 23. Reife or Baylife (T); bailiff (H).
 l. 25. uppe the accompts (T); *Om.* the profittes of (H).
- p. 76. l. 2. *Om.* thinks (H).
 l. 5, 6. as of other that commeth (T).
 l. 7. tents, unzismes (?), taxes (T).
 l. 11. account be they (T).
 l. 12. they have (T and H).
 l. 13. ratiocinales (H).
 l. 16. whereof one is called (T).
 l. 17. Tribulus (T).
 l. 19. as we (T); as ye (H).
 l. 23. declaratores (H); *Om.* part of (T and H).
 l. 24. in the lawe (T and H).
 l. 25. after the fashion (T and H).
 l. 26. as by (H and T); *Om.* men (H).
 l. 27. publicani (T and H).
 l. 31, 32. *Om.* of the commaundementes (T).
- p. 77. l. 1. *Om.* for the most part (T).
 l. 4. Earls office (T).
 l. 9. mercements (T).
 l. 11, 12. of latines (H) [blank in T]; reliquiae (T).
 l. 13. *Om.* such (T).
 l. 14, 15. respondent for the same (T); *Om.* As (T and H).
 l. 16. and for the most part (T and H).
 l. 25. Other to streyne (H); either to strayne (T).
 l. 27. to the sherif of the shyre (T).
- p. 78. l. 1. *facies* (T); *ins.* and is in this forme (T and H; H also leaves a space for further insertion).

APPENDIX C.

- p. 78. l. 2, 3. *distinguas* (T); *Om.* to the returne of the sherife (T and H).
 l. 3, 4. *Om.* for (T); appearing be (T).
 l. 5. mans head (T and H).
 l. 13. voide all (H); depending of (T).
 l. 23. *Om.* men (H).
 l. 26. enough (H).
 l. 27. merced [amersed] according to the discretion of the judge[s] (T and H).
- p. 79. l. 3. kinde of lawfull triall (T and H).
 l. 7. can be (H).
 l. 8. partie (T and H); their exceptions (T and H).
 l. 11, 12. parte (T); If foure be once allowed of both parties they foure do [trye and] allowe (T and H).
 l. 13. exceptions against them (T).
 l. 17. of all that (T).
 l. 18. conscience, when (T).
 l. 30. *Om.* order and (T).
 l. 32. *Om.* that it is (T).
- p. 80. l. 4, 5. *Om.* of the evidence (H).
 l. 8. partye (H).
 l. 15. verditte upon (T and H).
 l. 16-18. of one of [amongst] them (T and H); all. When... agreed (for it...agree) they (H).
 l. 21. narrowly (T).
 l. 30. *Om.* all (T).
- p. 81. l. 1. be names (H); be made (T).
 l. 3. manner of the (T).
 l. 7. shyre; as now (T); *Om.* and although (H).
 l. 10. but those did (T and H).
 l. 16. mette together in one day at the (T).
 l. 24. weapon or weapen (T and H).
 l. 27. monstere was (H).
- p. 82. l. 2. *Om.* most (T).
 l. 3. all so (T and H).
 l. 4. somewhear (T); hundrethes have their (T); had (H).
 l. 6-7. T places "such...things" between inverted commas.
 l. 7. Each hundred (T and H).
 l. 12. have such (T).
 l. 14. seem (T); 38 (T).
 l. 16. contaynithe (T); yet all (T).
 l. 18, 19. yeare, in the whole making but a quarter of a year (T).
 l. 22. being used (T).
 l. 24. in that sort (H).
 l. 26. all judgements (H).

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- p. 83. l. 4. likewise the baylife (T); bailiffe (H).
 l. 7. *Om.* or at his pleasure (T and H).
 l. 12. *Om.* other (T).
 l. 19. controversie among[st] them (T and H).
 l. 20, 21. can serve (T and H); for them which can be contented (T).
 l. 24-26. parte so will (T); writte from [of] Westminster Hall to bringe it thither (T and H).
 l. 27. to be (H).
 l. 28. summe, who to suche [a] quantitie doth (T and H).
 l. 30, 31. from them (H); who that will may bring it to (H and T).
 l. 33. *Om.* the marches of (T and H).
- p. 84. l. 1. at [blank in both MSS.].
 l. 4. *Om.* yet if (H).
 l. 7. Chauncery (H).
 l. 10. after the manner of (T); *Om.* of Englande (T).
 l. 11. manner (T).
 l. 17. to the men (H).
 l. 18. Prince that ruled (T and H).
 l. 19. *Om.* for (T).
 l. 20. frayers (H).
 l. 24. constayned (T).
- p. 85. l. 3, 4. laute or lauge (T); lawte or lage (H); corruptinge of (T).
 l. 4. *Om.* and chaunging (T); change (H); from law (T); from lawte (H).
 l. 6. *Om.* yet (T).
 l. 8. understood (H).
 l. 12. and the Barony and of the knighte and (H).
 l. 16. inhabitinge (T).
 l. 17. contrye (H); highest (T).
 l. 18, 19. or the most parte (H).
 l. 23. *Om.* come (H).
 l. 24. learning, activitie, or policie (T).
- p. 86. l. 1. *Om.* are not (T and H).
 l. 6. 30, 40 or 50 (T).
 l. 7-9. necessarie to do many things to have many of the Quorum: for because the wordes (T and H).
 l. 9. *nos* (T).
 l. 20. supposeth to be the (T).
 l. 28. upon them (T and H).
 l. 31. *Om.* out (T and H).
- p. 87. l. 1, 2. *Om.* thestes...extortioners (T).
 l. 3. all other such (T).
 l. 5. If any (T).

APPENDIX C.

- p. 87. l. 8, 9. for any of their [those] faults (T and H).
 l. 9. *Om.* bil (T).
 l. 15. on the back (H).
 l. 18. *ins.* The manner of yt [of the bill] is suche. *Inquiratur pro Domino Rege [si]* etc. (T and H).
 l. 19. truth (T).
 l. 23. looketh unto more shortly (T); For this first (H).
 l. 29. diverse shyres (T and H).
- p. 88. l. 6. ther is nothing determined thear (T and H).
 l. 14. in suspition (T and H).
 l. 22. *Om.* good (T).
 l. 26. *Om.* be more unrulie (T); most calme (T and H).
 l. 29. popular sorte (T); populacie (H).
- p. 89. l. 3. to take (T and H).
 l. 4. of those articles (H).
 l. 5. to meete (T and H).
 l. 8-29. T places "There was...wealth" between inverted commas.
 l. 8. in no (H).
 l. 15. and to call (H).
 l. 15, 16. occasion dothe present two or three (T).
 l. 19. So that this is a (T).
 l. 20. *Om.* good (T).
 l. 26. come to be doone (T and H).
 l. 27. manier de arguit (T).
- p. 90. Heading of chap. 20. takne (T); *Om.* may (T); can (H).
 l. 10. *Om.* still (T).
 l. 13, 14. The parish...this dutie (T and H).
 l. 15. to escape (T and H).
 l. 16, 17. parties (T); their (T).
 l. 19. herein (T); thereofe (T); but also (H).
- p. 91. l. 7. quantitie (T).
 l. 9. recognisaunts (H).
 l. 12. bodie thereof (T).
 l. 25. he empallenethe (T).
 l. 28. *Om.* or view (T).
- p. 92. l. 4. tolde you before of the (T).
 l. 5. somtyme to take a day of xx (H); sometime of (T).
 l. 7. *Om.* more (T).
 l. 14. streightwayes (T).
 l. 15. not as a (H).
 l. 25. saftie (T).
- p. 93. l. 10. or of killing any man (T and H).
 l. 11. take the (T and H).
 l. 13. hee finde cause (T and H); may keepe (T).

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- p. 93. l. 18. behaviour [havor] and abilitie (T and H).
 l. 23. *Om.* the Justice of peace (T).
 l. 27. ydlely and suspiciously (T).
- p. 94. l. 1. *Om.* Princes (T).
 l. 2. *Om.* till (T).
 l. 12. betokeneth is (T); yet knowen (H).
 l. 13. *Om.* or chiefe (T).
 l. 14. borowe or cheefe of the village (T).
 l. 16. "Cunning" [Conyng] which is Kinge. "Cunningstable"
 [Conyngstable] as (T and H).
- p. 95. l. 4. *Om.* also (T).
 l. 7. *Om.* but (T).
 l. 8. *Om.* commonly (T).
 l. 10. *Om.* yet (T and H).
 l. 11. there come (T and H).
 l. 12. any evidence (T).
 l. 20. standinge at (T).
 l. 25. quitt (H); And then be quitte (T).
- p. 96. l. 2-3. shire as they be appointed (T).
 l. 3. yeare, and so other to other (H).
 l. 5. up in Th' excheqr (H); uppon the Exchequer (T).
 l. 6. meeteth them all (T).
 l. 9. asketh for their (T); *Om.* for it (T); Exchequer and his
 bayliff (H).
 l. 10. by his baylifes hath (T).
 l. 11. enquirye (H); *Om.* of inquire (T).
 l. 13. readely (T).
 l. 17. tribunall seate of (T).
 l. 18. sit two or three (T); sitteth the ii or iii (H).
 l. 21-23. *Om.* according...peace (T).
 l. 24, 25. set alowe [on low] whear (T and H).
 l. 26. of the writtes of the exchequer (T).
 l. 27. table sitte the sheriff of the shyre, behind that there (H).
 l. 28. *Om.* with (T and H); space for the XII (T).
 l. 29. *Om.* men (T and H).
 l. 31. *Om.* by the gaoler (T); and chained (H).
- p. 97. l. 3. names, which when (T and H).
 l. 4. forth with (T).
 l. 7. then the clarke (T).
 l. 12. one horse of suche an (T).
 l. 18. *Om.* so (T); adjudged (T).
 l. 21. can (T); other table (T).
 l. 23. the table, as therwith his bodie is (T).
 l. 25. men do (T).

APPENDIX C.

- p. 97. l. 28. causes (T).
 l. 29. before judged (T).
- p. 98. l. 4. examined him (T).
 l. 6. if ther he (T).
 l. 9. triall. After (T).
 l. 12, 13. crime, and, Thou (T).
 l. 14, 15. and thy Countrie (H).
 l. 16. of thy (H).
 l. 17. against any (T and H).
 l. 19. *Om.* in (T); *Om.* Juror (T and H).
 l. 20. C.D. (T).
 l. 21. upright (T); *Om.* &c (T).
 l. 23. untill they (T).
 l. 26, 27. I have said before (H).
 l. 29. to have bene committed (T and H).
 l. 30. *Om.* daily (H).
 l. 31. men (H).
- p. 99. l. 4. everie man (T); cryinge (H); *Om.* then (H).
 l. 4, 5. or iiii untill (T); *Om.* of xii (T).
 l. 7. give any (H); any man have any evidence (T).
 l. 13, 14. evidence. Yf none come in to geve evidence (H).
 l. 16. hande and estimation yet (T).
- p. 100. l. 2. robbest (H).
 l. 3. dist beate (T).
 l. 6. *Om.* then (T and H).
 l. 7. *Om.* him (H).
 l. 10. any evidence (T).
 l. 17, 18. dutie to God and the [your] Prince (T and H); *Om.* doe...
 discharge (T).
 l. 19. this sometime (T).
 l. 22. I pray (H).
 l. 24, 25. *Om.* but (T); departure (T); *Om.* in writing (T).
 l. 27, 28. guiltie to bringe in what (T).
 l. 29. *Om.* time of the (H).
- p. 101. l. 5. that did give (H); that gave (T).
 l. 10. understanded (T and H).
 l. 14. sighte and presence (T).
 l. 24. *Om.* some (T).
 l. 27. *Om.* they tell (H).
 l. 29. they have bene by (T).
 l. 30. *Om.* though...expedition (T and H).
 l. 33-p. 102, l. 1. Then he asketh them (T); Then the Judge asketh
 (H).
- p. 102. l. 5. Thou A. (H).

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- p. 102. l. 6. A.B. (T).
 l. 7. being thereof (H); *Om.* thereto (T).
 l. 8. wilt (T); woldest (H).
 l. 9. sayest (T); and the (T).
 l. 11, 12. Thear he asketh of the quest (T).
 l. 17. matter. If...guiltie, the (T).
 l. 18. person had (T).
 l. 22. enquire of the matter (T).
 l. 23. Exchequer (T).
 l. 27. *Om.* such (H).
 l. 28. *Om.* be (H).
 l. 29. *Om.* one (T); *Om.* in (T).
 l. 30. feare of lyfe (T).
 p. 103. l. 4. psalm he will (H).
 l. 11. *non legit* (T).
 l. 13. A.B. (T).
 l. 17. *Om.* first (T).
 l. 25. *Om.* and is delivered (T).
 l. 27. after an other certaine (T).
 l. 28. sett at large (T).
 l. 31. acquitted forth (H).
 p. 104. l. 1. *Om.* he (H); an occasion (H).
 l. 3. but seldome (H).
 Heading of chap. 24. *ins.* Of (T).
 l. 9. *Om.* that will (T); they doo. (T).
 l. 10. dismembringe (T).
 l. 13. *Om.* committed (T).
 l. 15. engreve (T); (?) engreme (H).
 l. 17. which thing is very seldom seene (T); murders (T).
 l. 23, 24. for it is petit treason (T).
 l. 26. *Om.* but (T and H).
 l. 27. Attempt (H); To attempt (T).
 p. 105. l. 1. poison (T); in wait (H); laying wait (T).
 l. 2. *Om.* yet (T and H).
 l. 5. *Om.* but (T); As (H).
 l. 6. all that (T); *Om.* and (T).
 l. 9. *Om.* as (T); to torment (T).
 l. 14. for severitie (T); For how (T).
 l. 15. *Om.* as a free man (T).
 l. 21. *Om.* him (H).
 l. 22. byndeth him not (T).
 l. 26, 27. *Om.* for...torment (T).
 l. 29. than here (T).
 l. 32. shall (T).

APPENDIX C.

- p. 106. l. 1. absolve them (T).
 l. 3. *Om.* to any torment (H).
 l. 5. *ins.* And this is enquired upon in every fashion. (H).
 l. 8. men do judge him (T).
 l. 10. *Om.* there is (T); *Om.* his countrie (T and H).
 l. 11, 12. men of whome they have agreed themselves who do [doth] fynd them worthy [of] death (T and H).
 l. 13, 14. themselves (T and H).
 l. 15. haughty (T); haultaine (H); *Om.* but (T and H).
 l. 16, 17. *Om.* and punishment (T); and so (T and H)
 l. 18. ould auncient (T); "legum-latores" (T).
 l. 23, 24. manner [of] profit or commoditie (T and H).
 l. 24. onely the service (T and H).
 l. 27. is used in Treasons (T).
- p. 107. l. 2. headed (H); those quarters (T).
 l. 6. adjudged (T).
 l. 10. *Om.* Lord (T).
- p. 108. l. 3. in the matter (T); *Om.* it is (T).
 l. 9. Judge shall (T).
 l. 10. deferr (T and H).
 l. 11. *Om.* to say to (T).
 l. 12. declareth (H).
 l. 14. for as for (H); *Om.* and (T).
 l. 16-p. 109, l. 1. whereby he is (T).
- p. 109. l. 1. either founde guiltie or unguiltie (T).
 l. 3. And if the Sherif shold deferr th' execution and the prisoner either (H).
 l. 8. *Om.* Justices or of the (T).
 l. 9. *Om.* man (H); or an other to (T).
 l. 15. *Om.* upon (T and H).
 l. 17. in, he escapeth (T).
 l. 27. *Om.* but (T and H); Queene that now is (T).
 l. 28. *Om.* one (T).
 l. 30. a large (T).
 l. 33. wear put to utter ignominie (T).
- p. 110. l. 1. doinges of very many were accounted (T).
 l. 2. *Om.* verie (T).
 l. 3, 4. *Om.* Wherefore (T and H); This commeth (T and H).
 l. 4, 5. at some time (T).
 l. 7. *Om.* corruption and (T).
 l. 11. empallened (T).
 l. 12. men seemeth (T).
 l. 16. *Om.* and (T and H); *Om.* as (T and H).
 l. 26. before in (T).

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- p. 110. l. 28. judge (H).
- p. 111. l. 3. *Om.* that (T); to have gone (T).
- l. 4. afore (T and H).
- l. 6. defamed (T); yereday and waste (H); yeares waste (T).
- l. 8. present time (T).
- l. 12, 13. *Om.* and partie (T and H); *Om.* if...xx. li. (T and H).
- l. 14. *Om.* because (H).
- l. 18. And the meane they (H).
- l. 19. as is in them the (H).
- l. 20. *Om.* composition and (T).
- l. 24. gladly (H); the sentence of the first enqueste (T).
- l. 25. Mary, if (T and H).
- p. 112. l. 3. revoked afresh (T); revoked of fresh (H); to be disputed (T);
to the disputee (H) [cf. p. 130, l. 4].
- l. 6. *denihillare* (T).
- l. 9. 'processus' (T).
- l. 17. *Om.* being (T and H).
- l. 19, 20. Men they ar permitted (T).
- l. 26. But all these (T).
- l. 29. losse as evill (T).
- p. 113. l. 4. *Om.* man (T).
- l. 9, 10. apprehended and constitute[d] prisoner, not to be outlawed:
yet within (T and H).
- l. 15. see execution of justice (T).
- l. 18. I will leave (T).
- l. 19. professe accusation (T).
- l. 21. to the graunde assise (T and H); *Om.* to (T).
- l. 25. *Om.* in person (T); must finde (T).
- p. 114. l. 1. ἀθλητής (H).
- l. 4. *Om.* by (T).
- l. 6. *Om.* according (T).
- l. 8. as calumniator (T and H); suffer hanginge (T); the paine of
hanginge (H).
- l. 9. So that as well as by (T and H).
- l. 10. death to the one or to the other; mary this [is] more
(T and H).
- l. 12. needs die (T).
- l. 13, 14. *Om.* of death (T). This trial is shorte, for by, from
morninge to nighte the quarrell (T); querrell (H).
- l. 17. a small too do (H); as little to doe (T).
- l. 25. reason (H).
- l. 26. *Om.* they I say (H); Philosophie prevayle, it muche mis-
lyketh (T).
- l. 28. in many (T).

APPENDIX C.

- p. 114. l. 31. shadowe of their (T).
 l. 32. *Om.* of triall (H); now beene used, for (T).
 l. 33. rather see (T).
- p. 115. l. 1. the history of times (T).
 l. 12. enquire (T).
 l. 15. convicted (T).
 l. 17, 18. be to the lawe (T).
 l. 21. *Om.* understand (H).
 l. 22. in no (H).
- p. 116. l. 9. images with (T).
 l. 12. by force (T and H).
 l. 13. our nation (H); our forfathers (T).
 l. 14. to be either (T and H).
 l. 15, 16. or to civill warrs amonge themselves, which (T); and to
 much accustomed to civill warres within themselves, which
 (H).
 l. 17. *Om.* amongst (T); where men (T); and where men (H).
 l. 18. be plentifull (T and H); who when (T).
 l. 19. externe warrs (T and H).
 l. 21. combatts amonge (T and H).
 l. 22-25. themselves so much impacient of injury and right [wrong]
 as they were wont to do all injury they cold by force
 [could before] with prayse of manhood to their enemies.
 Our nation [being] used (T and H).
 l. 26. therunto (T).
 l. 32. retayneue (T); then at (T); *Om.* of...riots (T); therof the
 enquire at every sessions of (H).
 l. 33. Sessions of Ryots and Routts (T).
- p. 117. l. 3. themselves together (T).
 l. 4. [to] enquire of the Ryot (T and H).
 l. 6. dealt with (T and H).
 l. 8. *Om.* Kings (T).
 l. 14. *Om.* come (T).
 l. 16. one of (T).
 l. 17. *Om.* one (T and H).
 l. 21. condemned (T).
 l. 22. *Om.* shall be (H).
 l. 23. lying (T).
 l. 24. his restraint of libertie (T).
 l. 30, 31. wherof yt is attempted (T); wherefore he attempted (H);
 violence remitted (T and H).
 l. 32. *Om.* stoute (H).
 l. 33-p. 118, l. 1. *Om.* which...men (T); manner man (H).
- p. 118. l. 5. chamberlain (T).

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- p. 118. l. 6. to devise that court (T and H).
 l. 11. farre of from (H).
 l. 20. good remonstrance (T and H).
 l. 21. being well (T and H).
- p. 119. Heading of chap. 5. Courte (H).
 l. 1. Englishe (T).
 l. 4. warde or [an] orphan (T and H).
 l. 9, 10. *Om.* the age of (T); "tutores" and "curatores" (T).
 l. 10. countable (T and H).
 l. 11. *Om.* pupils (T and H).
 l. 17. *Om.* for (H); excuse them (T).
 l. 19. upon whom (T and H).
 l. 22. body of the person (T and H).
 l. 25. disagreement (T).
 l. 26. age xxj (H); *Om.* yeres (H); fourteen *struck out and replaced by 16*; *in margin*,—Westmr. the first cap 12 untill 16 (H).
 l. 29. esteemed [by] the profite of [blank in MS.] yeare of (T and H).
- p. 120. l. 3. of another (T and H); for thear is (T).
 l. 4. kinde of wardshipp which is called (T and H).
 l. 5. ward in socage (T and H).
 l. 7. of the kind (T).
 l. 10. if it discend (T).
 l. 11. countable (T and H).
 l. 18. wardshipp (T); for then she (H).
 l. 27. gardians or masters (H).
 l. 28. but also (T); houses and lands (H).
 l. 29. *Om.* to be (T).
- p. 121. l. 1. so ill (T).
 l. 2. daynties and pleasures (T).
 l. 8. *Om.* naturall (T).
 l. 11. other that hath (T).
 l. 15, 16. doe seeke how they (T).
 l. 17. They all say they (T).
 l. 22. sister or neece (T).
 l. 29. to the bare (T and H).
 l. 30. *Om.* sue *ouster le main* (T); *oultre le maine* (H).
 l. 31. after besydes (T).
 l. 33. that his father left him (T).
- p. 122. l. 4, 5. persons and gentlemen (T).
 l. 8. it is descended (H).
 l. 13. have a noble man (T).
 l. 22. education; our common wealth was (T and H).

APPENDIX C.

- p. 122. l. 24. destinate (T); It was thought (T and H); *Om.* Yet (T and H).
 l. 28. *Om.* finde and (T).
 l. 28-32. friendes. Who... service? (H).
 l. 29. for who (T).
- p. 123. l. 8, 9. of the matter, then an augmentation and that (T).
 l. 13. Englande as I have sayed be (T).
 l. 14. vitae & (H); vitae vel (T).
 l. 18. this have (H).
 l. 20. *Om.* juelles (T).
 l. 22. Lawe fee (H); Lawe and feode (T).
 l. 24. She neither (H).
 l. 25. *Om.* anie thing (T); her husbandes or hers (H); *Om.* owne (T).
 l. 26. *Om.* Theirs no (T). Hers no (H); things by (T).
 l. 27. *Om.* as (T); *Om.* aut (T); servi or (H); familiaris (H).
- p. 124. l. 7. applyed upon his buriall (T); bequest that (T).
 l. 10. her children (T).
 l. 12. thirde part (T).
 l. 14. betwixt (T and H).
 l. 15. But the (T); is if (T).
 l. 17, 18. *parenthesis from l. 17 placed after prescription* (T).
 l. 20. children (T).
 l. 21. such portions as (T); *Om.* it belongeth unto (T and H).
 l. 22. *Om.* the Ordinarie (T and H); *Om.* hath (T and H).
 l. 22, 24. (suche gravitie is dew to his discretion) for the most (T);
 suche gratuitye is due unto, according to his discrecion,
 for the most (H).
 l. 25. by the halfe (T).
 l. 27. in the[ir] preachers (T and H).
 l. 30. that they would (H).
 l. 31. gayne or profit (T); that they once (H and T); *Om.* so (T).
 l. 33. with certaine orders (T).
- p. 125. l. 9. Cnaisus (H).
 l. 13. even as (T).
 l. 17. out of one (T); out of their (H).
 l. 21. *Om.* but Philippe Smith (H); *Om.* and...signe (T).
 l. 22. *Om.* so (T).
 l. 23. and is called (T).
 l. 30. last husbände (T).
- p. 126. l. 1. we have certeine in (T); *Om.* olde lawe and (H).
 l. 2. mariages as (T); memorie and vew or (T).
 l. 3. as given (T).
 l. 6. did but buy (T).

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- p. 126. l. 7. Libripeus (T); Libripens (H).
 l. 8. "perfectae" (T).
 l. 11. *Om.* both (T).
 l. 17, 18. childe is accompted myne heire and lawefull (H); lawefull chylde (T).
 l. 22. *Om.* children (H); rather meliores (H); meliors (T).
 l. 23. unlawfull (T).
 l. 26. they legittimate (H).
 l. 28. sayed (T).
 l. 29. potestate viri (H).
- p. 127. l. 1. wives of Greece (H); wives in Greece (T).
 l. 3. *Om.* office (T).
 l. 8. wyfe (T).
 l. 10. especially when they be (T).
 l. 11. *Om.* them (T and H).
 l. 14. executrices (H).
 l. 16. governaunce of their (H).
 l. 20. talked of [onely] (T and H).
 l. 21. executrix (T).
 l. 23, 24. As the manner is of the (T and H); husbände bringeth (T and H).
 l. 26. [n]or alienate his wives land (T and H).
 l. 27. during the tyme of (H).
 l. 30. the next (T and H).
 l. 31. mary if (T and H).
 l. 33. userie of the (T).
- p. 128. l. 4. bought with [his] monye (T and H).
 l. 6, 7. *Om.* That...landes (T).
 l. 8. dower (T).
 l. 9. have any childe (H); to him (H); unto them (T).
 l. 10. *Om.* eldest (T and H); have none the rest descendethe (T).
 l. 16. understanded (T and H).
 l. 17. is not more (H).
 l. 20, 21. wife, themselves, their parents, and (T).
 l. 22. strength wherein (T).
 l. 29. other lands (T and H).
- p. 129. l. 1. *Om.* other (H).
 l. 2. mancipatio (H).
 l. 3. Like (H).
 l. 6. manner of law (T).
 l. 10. controllinge (T and H).
 l. 15. there is no (H); honour dieth (T).
 l. 16. wholly (H); lands descend wholly (T).
 l. 20. in his life time (T).

APPENDIX C.

- p. 129. l. 24, 25. that ceremony (T and H).
 l. 26. *Om.* by (T and H); lawe taketh place. If (T and H).
 l. 28. partition (T).
 l. 31, 32. *Om.* in...and (T); yet that which is called ganelkinde or
 Gabel kinde (T); gavell kinge (H).
- p. 130. l. 4. (?) disputee (H) [cf. p. 140, l. 12].
 l. 11. *Om.* which...servi (T and H).
 l. 12. the disputee (H) [cf. l. 4].
 l. 15. ther was other which (T).
 l. 18. bond men (T and H).
 l. 19. and those (H).
 l. 20. villains regardants (T and H); *Om.* immediately (T and H).
 l. 23. nigri censiti (T).
 l. 25. manor. Those in the [our] (T and H).
 l. 26, 27. called villains appendants of the manor (T and H).
 l. 28. *Om.* number (T).
- p. 131. l. 1-3. *Om.* of...that (T); speaking of (T).
 l. 4. the sortes (H); these sortes (T).
 l. 5, 6. *Om.* in Englande (T); used as done (T).
 l. 10. since the (T); required (T).
 l. 11, 12. *Om.* which...brethren (T).
 l. 12. Christ we be all "conservi" (T).
 l. 14, 15. he must (H); the rest acknowledge (T).
 l. 15, 16. their brother, and even as fitly termed a Christian (T);
 terme even Christian (H).
 l. 17, 18. with me [?men] (H); Christ with man (?) to have portion
 in the gospell of salvation (T).
 l. 18, 19. scruple, long tyme ago, and by (T and H).
 l. 20. especially in extreme (T).
 l. 23. *Om.* and litle (H).
 l. 25. all theirs. Marie (T and H); *Om.* with the (T and H).
 l. 26. *Om.* in...by (T and H).
 l. 28. Churche (T).
 l. 29. Churche (T and H); mannor (T).
 l. 31. *Om.* at...and (T).
 l. 33. them partly (H); theirs; partly (T).
- p. 132. l. 4. *Om.* yet (T and H).
 l. 5. *Om.* with us (T); in such sort (H).
 l. 8. to holde (T and H).
 l. 9. other save that (H); other savinge that (T).
 l. 10. would fleese (T).
 l. 12. taile now them (H); do take now and thenn and take a
 peece of mony of them whom (T).
 l. 15. chainging (T); chagement (H).

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- p. 132. l. 16. *Om.* gentle (T).
 l. 17. Christians (H).
 l. 18. *Om.* servile (T).
 l. 20. [the] villayns appendant[s] (H and T); and afterwards (H).
 l. 21. extinguished and finding (H); extinguished that finding (T).
 l. 23. time of gentility (T and H).
 l. 24. *Om.* they...whole (T).
 l. 27. christned (T); Christomed (H).
 l. 28, 29. *Om.* and serve...them (T).
- p. 133. l. 5. *Om.* part (T).
 l. 8. *Om.* one (T).
 l. 12. *Om.* have (H).
 l. 13. their oulde profetts did (T).
 l. 14. *Om.* that (H); that that Christ which was (T).
 l. 16. their healthe in (T).
 l. 20. it hath fructified (H); fructifying (T).
 l. 21. have brought (T); humaine gentleness (T).
 l. 25. *Om.* in (H); serf (H).
 l. 28. teach us (H).
 l. 29. Barbares (H).
 l. 30. serfs or (H); slaves and (T).
 l. 32. a syne and fashion (T).
- p. 134. l. 1. villaines appendant[s] (T and H).
 l. 1, 2. ground, [and] for that service and that (T and H).
 l. 7. *Om.* as (T and H).
 l. 12. This terme (H).
 l. 13. villany (T).
 l. 15. *Om.* lande (T).
 l. 17. upper grounde (H).
 l. 19, 20. *Om.* doeth bring (H).
 l. 23. faith and confidence or (T).
 l. 24. some other service (T); a Lorde (H).
 l. 25. *Om.* againe (T and H).
 l. 30. capite (T and H).
 l. 32, 33. he sweareth (H).
- p. 135. l. 1, 2. *Om.* His...land (T).
 l. 2. father, if he be within th' age shalbe his ward, and his daughter if he holdeth the land after the death of the father, shall be married (H).
 l. 2-4. father, yf he be within age shall be his warde, and his daughter yf shee holde the lande (T).
 l. 5. almosine (?) (H); almosy (T); *Om.* cause and (H).
 l. 10. foedo (H); feode (T).
 l. 14. save (T and H).

APPENDIX C.

- p. 135. l. 15. be indeed not "vere [veri] Domini" (T and H); *Om.* but rather (T).
 l. 24. *Om.* was (T); in fide (H).
 l. 25. or in feaf: (T).
 l. 26, 27. Lawyer (H); *Om.* make (H); *Om.* a (T); words (T).
 l. 30. fief, feoff, or fioffees and feoffers (H); fef, feaf, or feoffes (T).
- p. 136. l. 3. *na.* [blank in MS.] (H); *vetitum namium* (ed. 1584); *vetitum*, mary (T).
 l. 3, 4. when it is in plaine [in oulde] duche and our (T and H).
 l. 5. yther nempte (H); vither-nempte iterum accipere (T).
 l. 7. taketh (H).
 l. 9. carieth (H).
 l. 10. order of tyme (T).
 l. 17. of them bothe (T).
 l. 18. tourne thither from (T).
 l. 19. parties be free (T).
 l. 28. bound (H).
 l. 29. thereof. This is (T and H).
 l. 33. betwixt (T and H).
- p. 137. l. 6. is but by (H); is but for (T).
 l. 7. a time. For the time (H); *Om.* and...time (T).
 l. 16. meete. He is (H); masters findinge (T).
 l. 19. *Om.* for (T and H); *Om.* or x (T).
 l. 20. yeres, some x or xii yeares (T).
 l. 21. *Om.* shall...or (T and H).
 l. 22. noteth (T); hath well noted (H).
 l. 24, 25. *Om.* neither yet doeth (T and H); and the worde dothe [not] betekne it [that] as Polidor dothe suppose (T and H).
 l. 30. as one (T).
- p. 138. l. 3. *Om.* upon (T and H).
 l. 7. hired by the yeare (H).
 l. 9. all the whole (T).
 l. 12. *Om.* and be (T and H).
 l. 16. must not (T).
 l. 18. depart out of his service (T and H).
 l. 19. expyred (T).
 l. 21. *Om.* unmarried (T).
- p. 139. l. 3. himselfe (T).
 l. 4. *Om.* spoken (T).
 l. 6. him selfe (T).
 l. 15. "servi" (T); service (H).
 l. 18. one fashion and some [after an] other (T and H).
- Heading of chap. 9. bookes (T and H).

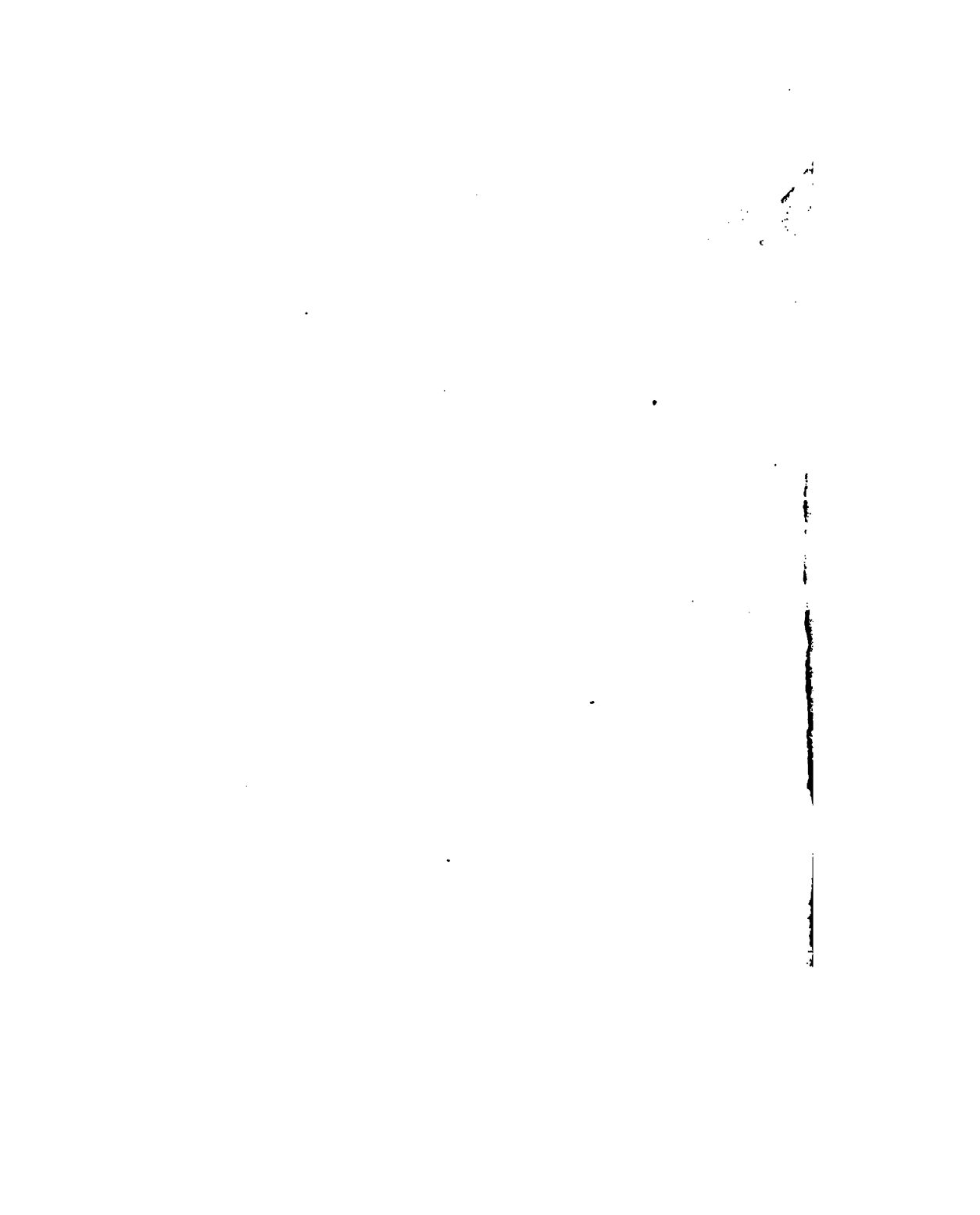
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